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## SUBCOMMITTEE ON TRADE

OF THE

## COMMITTEE ON WAYS AND MEANS
## U.S. HOUSE OF REPRESENTATIVES

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## WRITTEN COMMENTS

ON

# TECHNICAL CORRECTIONS TO RECENT TRADE LEGISLATION

**MAY 26, 1995**

Printed for the use of the Committee on Ways and Means by its staff

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## FROM THE COMMITTEE ON WAYS AND MEANS

### SUBCOMMITTEE ON TRADE

FOR IMMEDIATE RELEASE
April 25, 1995
No. TR-8

CONTACT: (202) 225-6649

## CRANE ANNOUNCES REQUEST FOR WRITTEN COMMENTS ON TECHNICAL CORRECTIONS TO RECENT TRADE LEGISLATION

Congressman Philip M. Crane (R-IL), Chairman of the Subcommittee on Trade of the Committee on Ways and Means, today announced that the Subcommittee is requesting written comments for the record from all parties interested in technical corrections to recent trade legislation.

### BACKGROUND:

During the 103rd Congress, two major pieces of trade legislation were passed: H.R. 3450, the North American Free Trade Implementation Act (P.L. 103-182) and H.R. 5110, the Uruguay Round Agreements Act (P.L. 103-465). The Subcommittee considered a set of technical amendments as part of the Uruguay Round Agreements Act but they were not included in the final version of the bill. On May 17, 1994, the House passed H.R. 3419, the Tax Simplification and Technical Corrections Act, making technical corrections to the tax and trade laws. The Senate did not act on this bill.

As a result of the enactment of major trade legislation and prior consideration of these technical amendments, Chairman Crane is requesting submission of written comments on these and any other purely technical, deficit neutral, changes to U.S. trade laws. Attached is a compilation of proposed amendments that includes proposals from the Administration and the Congress.

### DETAILS FOR SUBMISSION OF WRITTEN COMMENT:

Persons submitting written comments should submit six (6) copies, with their address and date of request noted, by the close of business, **Friday, May 26, 1995**, to Phillip D. Moseley, Chief of Staff, Committee on Ways and Means, U.S. House of Representatives, 1102 Longworth House Office Building, Washington, D.C. 20515.

### FORMATTING REQUIREMENTS:

**Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.**

**1. All statements and any accompanying exhibits for printing must be typed in single space on legal-size paper and may not exceed a total of 10 pages including attachments.**

**2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.**

**3. A witness appearing at a public hearing, or submitting a statement for the record of a public hearing, or submitting written comments in response to a published request for comments by the Committee, must include on his statement or submission a list of all clients, persons, or organizations on whose behalf the witness appears.**

**4. A supplemental sheet must accompany each statement listing the name, full address, a telephone number where the witness or the designated representative may be reached and a topical outline or summary of the comments and recommendations in the full statement. This supplemental sheet will not be included in the printed record.**

**The above restrictions and limitations apply only to material being submitted for printing. Statements and exhibits or supplementary material submitted solely for distribution to the Members, the press and the public during the course of a public hearing may be submitted in other forms.**

* * * * *

## Proposed Technical Amendments

Customs Modernization Act and Miscellaneous Customs' Proposals

1. Clarify that the amendment regarding payment of duties and fees made by section 642 of the Modernization Act is effective for entries and warehouse withdrawals made on or after December 8, 1993.

2. Correct a citation in 19 U.S.C. 1509 by replacing "(c)(1)(A)" with "(d)(1)(A)".

3. Replace references to "lawful duties" with "lawful duties, fees and taxes," as appropriate, in order to recognize that Customs collects fees and taxes as well as duties.

4. Repeal 19 U.S.C. 1707, which is an obsolete statute requiring certificates of importation for alcoholic beverages on small vessels.

5. Amend 19 U.S.C. 1431(c)(1) by deleting "such" and inserting "a vessel" in order to clarify that the reference is to vessel manifests and does not include other types of manifests.

6. Amend 19 U.S.C. 1484(a)(1) to delete an obsolete statutory reference.

7. Amend 19 U.S.C. 1401(a) to clarify that a reconciliation should be treated as an entry for purposes of recordkeeping laws by inserting "recordkeeping," after "reliquidation," and amend 19 U.S.C. 1508(c)(1) by inserting ", filing of a reconciliation," after "entry".

8. Amend 19 U.S.C. 1505(c) to provide an exemption for interest accrual on duty paid or owed where an entry is liquidated or reliquidated due to an importer's claim for preferential tariff treatment under the NAFTA by inserting "or, where a claim is made under 19 U.S.C. 1520(d), the date after such claim is made" after "duties, fees, and interest" in the second sentence.

9. Amend 19 U.S.C. 1504(d) to ensure that the lifting of a notice of suspension of liquidation does not result in the liquidation of an entry if an extension notice has been issued by inserting ", unless liquidation is extended under subsection (b)," after "shall liquidate the entry".

10. Amend 19 U.S.C. 1631(a) to clarify that compensation paid to debt collection agencies applies to debts owed to the U.S. Customs Service by inserting "and the expenses associated with recovering such indebtness" after "Government"; and inserting "including, but not limited to, 31 U.S.C. 3302, and any provision of the Debt Collection Act of 1982 (31 U.S.C. 3701, et seq.)" after the word "law".

11. Amend 19 U.S.C. 1321(a)(2)(B) to correct an omission of reference to a tariff number in the HTS by inserting ", 9804.00.65" after "9804.00.30".

Customs and Trade Act of 1990

1. Clarify the application of customs user fees (section 111(b)(2)(D)(v) of the Customs and Trade Act, section 13031(b)(8)(D) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and 19 U.S.C. 58c(b)(8)(D)) that the ad valorem merchandise processing fee applies only to the foreign value of merchandise entered from a foreign trade zone.

2. Amend 19 U.S.C. 1553 note to clarify that Canadian lottery material is not entered into the United States for consumption by replacing ", or withdrawn from warehouse for consumption" in the "Effective Date" section of the Act with "for transportation in bond".

Omnibus Trade and Competitiveness Act of 1988

Amend section 1102(a) of the Omnibus Trade and Competitiveness Act of 1988 (19 U.S.C. 2902) to reflect that tariff reductions that might be proclaimed by the President will be based upon the tariff rates under the HTS rather than under the TSUS.

Caribbean Basin Economic Recovery Act and Andean Trade Preference Act

Amend section 213(h)(1) of CBERA and section 204(c)(1) of ATPA to clarify that duty reductions on certain handbags, luggage, flat goods, work gloves, and leather wearing apparel do not apply to textile and apparel articles which are subject to textile agreements.

Consolidated Omnibus Budget Reconciliation Act of 1985

1. Amend section 13031(b)(9)(A) to clarify that Customs may provide daytime reimbursement services to centralized hub facilities during daytime hours. Also clarifies that Customs may be reimbursed for all services related to the determination of release cargo, and not just "inspectional" services. These services are reimbursable regardless of whether they are performed on site or not.

2. Amend section 13031(b)(9)(B)(II) to correct an erroneous citation by deleting "section 236 of the Tariff and Trade Act of 1984" and inserting "section 236 of the Trade and Tariff Act of 1984".

Tariff Act of 1930, as Amended

1. Amend section 337(b)(3) to correct the erroneous citation to the antidumping and countervailing duty statutes by deleting "section 303, 671, or 673" after the second sentence and inserting "section 303, 701, or 731".

2. Amend section 509 (19 U.S.C. 1509) by deleting "appropriate regional commissioner" and inserting "officer designated pursuant to regulations".

3. Amend section 515 (19 U.S.C. 1515) by deleting "district director" and inserting "port director".

# UNITED STATES INTERNATIONAL TRADE COMMISSION

WASHINGTON, DC 20436

May 4, 1995

Ms. Michelle O'Neill
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Ms. O'Neill,

You have requested that we identify for you any appropriate technical amendments to the Uruguay Round Agreements Act ("URAA"). At this time, we are aware of only two possible technical problems, (1) an apparent oversight in the negligibility provision, and (2) an issue with respect to "equitable remuneration" in connection with Section 337.

The provision defining "negligibility", codified at Section 771(24), 19 U.S.C. § 1677(24), provides that imports from a subject country that are less than 3 percent of the volume of all such merchandise imported into the United States shall be deemed negligible. One exception to this rule is that imports shall not be deemed negligible where the sum of imports from all countries subject to investigations initiated on the same day that each individually account for less than 3 percent of total imports, collectively account for more than 7 percent of the volume of all such merchandise. In countervailing duty investigations of imports from developing countries, the numerical standards for negligibility are higher: 4 percent of total imports for an individual subject country and 9 percent of total imports for otherwise aggregated subject imports. 19 U.S.C. § 1677(24)(B).

For analysis of threat of material injury, the statute expressly carries forward the 3 percent /7 percent numerical standard, directing the Commission not to treat as negligible imports from a country if "there is a potential that imports from such a country . . . will imminently account for more than 3 percent" of total imports, or that aggregated volumes from subject countries will imminently exceed 7 percent of total imports. There is no corresponding provision concerning the 4 percent/9 percent numerical threshold for "potential" imports from developing countries.[1] While such imports would presumably also be assessed under the special 4 percent/9 percent definition of negligibility in the threat context, the reference in subparagraph (B) to the 4 percent/9 percent exception is to clauses (A)(i) and (A)(ii), which refer to the general 3 percent/7 percent standard, and not to clause (iv), which is the provision dealing with negligibility for threat analyses:

> (B) In the case of an investigation under section 1671 of this title, subparagraph (A) shall be applied to imports of subject merchandise from developing countries by substituting "4 percent" for "3 percent" in subparagraph (A)(i) and by substituting "9 percent" for "7 Percent" in subparagraph (A)(ii).

We suggest the following technical amendment, indicated in bold and underline, to this subparagraph:

> (B) In the case of an investigation under section 1671 of this title, subparagraph (A) shall be applied to imports of subject merchandise from developing countries by substituting "4 percent" for "3 percent" in subparagraph**<u>s</u>** (A)(i) **<u>and (iv)</u>** and by substituting "9 percent" for "7 percent" in subparagraph**<u>s</u>** (A)(ii) **<u>and (iv)</u>**.

We have also identified a possible oversight in connection with section 337 patent-based exclusion orders. Patent-based exclusion orders in ITC investigations brought under section 337 of the Tariff Act of 1930 typically continue in force for the remaining term of the patent. The current term of a United States utility patent is 17 years measured from the date the patent issues. However, section 532(a) of the URAA provides that all utility patents in force on, or arising from patent applications filed before June 8, 1995, will have a term that is the greater of 17 years from the date the patent was issued or 20 years from the date the application for patent was filed. In effect, section 532(a) will extend the term of a patent if prosecution of the patent application before the U.S. Patent and Trademark Office was completed in less than 3 years.

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[1] Article 27.9(b) of the WTO Agreement on Subsidies and Countervailing Measures imposes the 4/9 requirement without reservation or exception for threat.

To address situations where a person has made substantial investment in preparation for use of the patented invention before June 8, 1995, and such use becomes infringing because of the extension of the patent term, section 532(a)(1) of the URAA provides that such persons may continue the infringing activity during the period of extension upon the payment of "equitable remuneration" to the patent owner, and that the patent infringement remedies of injunction, damages, and attorneys fees provided for in Title 35 of the U.S. Code will not apply.[2] Section 532(a)(1) of the URAA is silent, however, with respect to remedies for patent infringement other than those provided for in Title 35, notably remedies imposed by the ITC under section 337. There is no legislative history indicating whether Congress intended that the equitable remuneration provision be applied to section 337.

The equitable remuneration provision of section 532(a)(11) of the URAA does not literally apply to section 337 remedial orders. The existing statute and legislative history provide the Commission with no guidance concerning whether Congress intended the Commission to apply indirectly the equitable remuneration of section 532(a) of the URAA to section 337 remedial orders. If section 532(a)(1) is not extended to section 337, it could be argued that the law accords imported products less favorable treatment than that accorded to products of U.S. origin.

Although the Commission has not yet been presented with an "equitable remuneration" argument, we alert you to this issue so that, should Congress so desire, it may clarify its intent.

Should you require any further information or assistance please call Jeff Menath at 205-3151. He will either answer your question or get an answer for you from appropriate sources within the Commission.

Sincerely,

Lyn M Schlitt

Lyn Schlitt
General Counsel
International Trade
Commission

cc: Jeff Menath
The Commission

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[2] <u>See</u> the Statement of Administrative Action accompanying the URAA, House Document 103-316, Vol. 1, page 1003.

## WRITTEN COMMENTS OF THE AIR COURIER CONFERENCE OF AMERICA

These comments are submitted on behalf of the Air Courier Conference of America ("ACCA"), a trade association representing the interests of the international integrated express carrier industry. ACCA's members include DHL Airways, Inc., Federal Express Corp., TNT SkyPak International Express, Inc., United Parcel Service and over 100 other couriers. Express carriers comprise a relatively new and rapidly expanding industry, which has evolved during the past two decades in response to the needs of international commerce for expedited, integrated, door-to-door delivery of documents and packages worldwide. The Association's members specialize in urgent, time-sensitive, high volume shipments, and are currently responsible for up to 10,000 customs entries per day, and as many as 3 million entries per year. The industry expects shipment volumes to increase significantly over the next several years. It is the fastest growing segment of international trade.

ACCA appreciates this opportunity to comment on the proposed technical corrections. ACCA worked closely along with the Customs Service and the Joint Industry Group in the development of the Customs Modernization Act passed as part of the North American Free Trade Agreement Implementation Act (Pub. Law 103-182). ACCA submits these comments in support of a technical provision, which was omitted from the Act for non-substantive reasons. This technical correction amends section 13031(b)(9)(A) of the Consolidated Omnibus Budget Reconciliation Act of 1995, to clarify that reimbursable services may be provided by the Customs Service to centralized hub facilities during daytime hours as they are currently provided to express consignment carrier facilities.[1/] The provision is intended to correct this discrepancy. It also clarifies that Customs may be reimbursed for all services related to the determination of release of cargo.[2/] The provision is purely technical and deficit neutral.

The need for this provision was created by a hypertechnical interpretation of the Comptroller General of the user fee statute. Specifically, the Comptroller General's decision held that the Customs Service may not assess express air freight carriers its costs of providing daytime clearance services at the carriers' centralized hub facilities because the Customs and Trade Act of 1990, Pub. L. No. 101-302 only authorizes Customs to charge fees for services provided at centralized hub facilities outside normal operating hours.[3/] The Comptroller General noted that for Customs to assess and collect fees during regular operating hours at centralized hub facilities, Congress should amend the Customs and Trade Act. This anomaly in the law allows reimbursable services at express consignment carrier facilities at any time during the day or night and but precludes such services at centralized hub facilities during daytime hours. There is no rationale basis for the distinction.

Because of the industry's growth, it often requires round-the-clock inspectional services to provide its customers with express delivery. Thus, it is extremely important to make this

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1/ A hub is a separate, unique, single-purpose facility normally operating outside of Customs operating hours approved by the district director for entry filing, examination and release of express consignment shipments; an express consignment carrier facility is a separate or shared specialized facility approved by the district director solely for examination and release of express consignment shipments. <u>See</u> 19 C.F.R. § 128.1(d) and (e).

2/ H. Rep. No. 607, 2d Sess. 102d Cong. 152 (1992).

3/ 71 Comp. Gen. 444, File No. B-244345 June 23, 1992.

technical correction to the law to give Customs the necessary flexibility to accommodate trade flows and enable it to provide inspectional services at centralized hubs when needed including during daytime hours.

Customs has supported this clarification of 19 U.S.C. § 58c. Because these positions are fully reimbursed by the express carriers, this Committee has noted when previously discussing the provision that "the Customs Service's allocation of full-time employees, as provided in appropriations bills, shall not be reduced or affected in any by the amendment" and that "reimbursable services positions" are "to be in addition to positions currently allocated to the Customs Service.[4] In these times of budgetary constraints and lean staffing, it is extremely important that reimbursable services positions be in addition to positions allocated to the Customs Service.

In sum, this provision meets the standards for inclusion in any technical corrections to recent trade legislation, being truly a technical correction to the law and being revenue neutral.

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[4] H. Rep. No. 607, 2d Sess. 102d Cong. 152 (1992).

STATEMENT OF THE AIR TRANSPORT ASSOCIATION OF AMERICA
ON TECHNICAL CORRECTIONS
TO RECENT TRADE LEGISLATION
May 26, 1995

The Air Transport Association (ATA) submits the following comments to be included in the record on technical corrections to recent trade legislation of the Subcommittee on Trade of the Committee on Ways and Means:

Comments on Chairman Crane's proposed technical corrections bill

ATA has no objection to any of the proposed amendments to the Tariff Act or to the Harmonized Tariff Schedule. We do have particular interest in the following items listed on press release TR-8:

**Customs Mod Act and Miscellaneous Customs Proposals:**

(5) "Amend 19 U.S.C. 1431(c)(1) by deleting 'such' and inserting 'a vessel' in order to clarify that the reference is to vessel manifests and does not include other types of manifests."

*ATA Note: It is highly important, in the interests of cargo security and confidentiality of business data, that air cargo manifests remain immune to publication in any form.*

(11) "Amend 19 U.S.C. 1321(a)(2)(B) to correct an omission of reference to a tariff number in the HTS by inserting ',9804.00.65' after "9804.00.30'."

*ATA Note: The proposed additional tariff number refers to the duty exemption for returning resident passengers.*

**Consolidated Omnibus Budget Reconciliation Act of 1985:**

(1) "Amend section 13031(b)(9)(A) [19 U.S.C. 58c(b)(9)(A)] to clarify that Customs may provide daytime reimbursement services to centralized hub facilities during daytime hours. Also clarifies that Customs my be reimbursed for all services related to the determination of release cargo, and not just 'inspectional' services...."

*ATA Note: This has been a long-time ATA special interest, in that the revision is needed to accommodate efficient operations of air express carriers.*

Comments on proposed amendments to the Harmonized Tariff Schedule

Additionally, we propose that the following amendments to the Harmonized Tariff Schedule (HTS) be added to the bill:

1. Amend the Harmonized Tariff Schedule, Chapter 98, to facilitate the return of used, previously imported aircraft parts, which are being returned either as repositioned inventory or having been removed from an aircraft overseas for repair in the United States. In conformance with Treasury Decision 55507(3), add an additional subheading to Chapter 98, as follows:

| | |
|---|---|
| 9801.00.30.10 | ***Any aircraft part or component, previously imported, with respect to which the duty was paid upon such previous importation, if (1) reimported without having been advanced in value or improved in condition by any means while abroad, (2) reimported after having been exported without benefit of drawback and not subsequently cleared through foreign Customs into another country, and (3) reimported by or for the account of the person who exported it from the United States or from whose aircraft it had been removed while abroad ......................................Free*** |

2. Amend HTS subheading 9804.00.40 to clarify that the duty-free allowance/limitation for non-resident persons in transit through the United States is not intended to apply to passengers making a same-day connection to a flight or conveyance departing for a third country.

9804.00.40. Articles imported by or for the account of any person arriving in the United States who is not a returning resident thereof...Not exceeding $200 in value of articles...accompanying such a person who is in transit to a place outside United States customs territory ***(except when such person is making a same-day connection to a flight or conveyance departing the United States)*** and who will take the articles with him to such place........................................Free

3. Amend HTS General Note 3(c)(iv) so that the requirement for filing certifications of use for civil aircraft parts will conform with other Customs procedures as revised by the Customs Modernization Act (NAFTA Act). Proposed language:

(iv) Articles Eligible for Duty-Free Treatment Pursuant to the Agreement on Trade in Civil Aircraft. Whenever a product is entered under a provision for which the rate of duty "Free(C)" appears in the "Special" subcolumn, the importer shall file a written ***or electronic*** statement, accompanied by such supporting documentation as the Secretary of the Treasury may require, ~~with the appropriate customs officer~~ ***with U.S. Customs*** stating that the imported article has been imported for use in civil aircraft....

AMERICAN APPAREL MANUFACTURERS ASSOCIATION

May 22, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

In response to the Ways and Means Committee's request for comments regarding technical corrections to recent trade legislation, the American Apparel Manufacturers Association is requesting an amendment to the Harmonized Tariff Schedule of the United States, Section XXII, Chapter 98, as implementing Annex 300-B, Appendix 3.1, ¶ 10 of the North American Free Trade Agreement ("NAFTA"), under the NAFTA Implementation Act, Title II, §201(a), Pub. L. No. 103-182 (Dec. 8, 1993).

AAMA is the primary trade association of the U.S. apparel industry, representing approximately 70 percent of the U.S. production. Our members make everything from socks to caps, from underwear to shirts and sweaters, to suits and overcoats. Our members are the source of more than 700,000 manufacturing jobs. In total there are approximately 1,000,000 apparel manufacturing jobs in the U.S. and almost every state has some apparel employment. Nineteen states have more than 10,000 apparel jobs and eight of those have more than 50,000 jobs.

We are proposing the following amendment to the above cited section:

| | |
|---|---|
| 9802.00.90 00 | Textile and apparel goods, assembled in Mexico in which all fabric components are wholly formed and cut in the United States, which (a) were exported in condition ready for assembly without further fabrication, (b) have not lost their physical identity in such articles by change in form, shape or otherwise, and (c) have not advanced in value or improved in condition abroad except by being assembled and except by operations incidental to the assembly process; provided that goods classified in Chapters 61, 62 or 63 may have been subject to bleaching, garment dyeing, stone-washing, acid-washing, or perma-pressing, ovenbaking, enzyme-washing and enzyme-stonewashing, or similar processes. after assembly provided for herein. |

2500 Wilson Boulevard/ Suite 301/ Arlington, Virginia 22201-3837 • 703/524-1864 • FAX 703/522-6741

**CURRENT LAW**

The present provision, HTSUSA subheading 9802.00.90, was enacted under the North American Free Trade Agreement Act to extend a duty preference to the full value of textile and apparel goods assembled in Mexico from U.S. formed and cut fabric components. The NAFTA agreement also extends a quota preference to such goods, continuing and expanding upon a quota preference formerly provided under a Special Regime administered by the Committee for the Implementation of Textile Agreements ("CITA"). Under subheading 9802.00.80 (formerly "TSUS 807"), only the value of U.S. components assembled abroad is entitled to duty free treatment upon the importation of the assembled article.

Both subheadings 98092.00.80 and 9802.00.90 allow preferential duty treatment to garments assembled abroad from U.S. cut components, so long as the garments are not subjected in the country of assembly to operations that are more than "incidental to assembly." However, subheading 9802.00.90 allows certain post-assembly finishing operations -- bleaching, dyeing, perma-pressing, stone-washing, and acid-washing -- despite the fact those particular operations are considered to be more than incidental under the customs regulations interpreting subheading 9802.00.80. See 19 C.F.R. §10.16(c)(4) and Customs rulings discussed below.

The Customs regulations interpreting subheading 9802.00.80 not only disallow the above cited finishing operations, but disallow duty preferences to any garment subjected to any "[c]hemical treatment of components or assembled articles to impart new characteristics." This broad interpretation of subheading 9802.00.80 has allowed Customs to rule that oven-baking to create a permanent press effect, and stone-washing to "fade" and create a worn look and texture to apparel, are non-incidental operations forbidden by this prohibition. HRL 027763 (Sept. 13, 1973) (oven-baking); HRL 557012 (April 22, 1993) (oven-baking); HRL 55565 (March 11, 1991) (stonewashing); HRL 557115 (May 28, 1993)(enzyme/bleach "classic wash"). On the other hand, certain wash processes that soften garments with the use of enzymes are allowable under subheading 98002.00.800, according to Customs, so long as no bleach is used. HRL 558982 (Mar. 3, 1995) (enzyme-wash without bleach, no fading or change in texture); HRL 557195 (Oct. 14, 1993) (same).

Despite denial of duty benefits, CITA provided that bleaching, garment dyeing, stone-washing, acid-washing and perma-pressing (which disqualified the assembled article from the duty preference under subheading 9802.00.80) were permissible under the Special Regime for quota preference purposes. NAFTA continued and expanded the quota preference to cover all textile, apparel and made up articles. It also expanded the duty preference to cover the entire value of the garment and to be coextensive with the quota exemption. To this end, subheading 9802.00.90, carves out those common processes (i.e., bleaching, garment dyeing, stone-washing, acid-washing and perma-pressing) considered more than incidental to assembly by Customs but permissible by CITA, as permissible for duty preference purposes.

**PROPOSED CHANGE**

The proposed change will not expand the coverage of the current provision but will continue its original intent. For example, an advanced enzyme-washing process, designed to create a "stone-washed" look and feel, with or without the use of bleach or stones, is a process which has nearly the identical effect as stone-washing or acid-washing of fading and softening denim and other apparel. This process is sometimes referred to as "enzyme-stonewashing." Likewise, oven-baking is simply a "perma-press" process.

However, because the existing provision only lists certain particular process names, the industry is concerned it may be interpreted to exclude other similar finishing operations which have identical or similar effects on apparel items. Read literally the current provision would only allow the process used under the "Perma Press" trademark owned by Airwick Industries, Inc. (TM Reg. No. SN 736589). Obviously, neither the NAFTA negotiators or Congress intended to confer a singular benefit on this trademark holder. By specifically allowing "similar processes," the provision will allow U.S. Customs the discretion to assess the nature and effect of similar existing or future-developed processes and to determine if, like enzyme-washing and oven-baking, they are akin to the named processes and, thus, within the scope of this provision.

We are eager to work with the Ways and Means Committee regarding this important technical modification. We are available to meet with Members of the Committee, as well as Committee staff, to discuss our proposal in greater detail. If you have any questions or need additional information, please do not hesitate to contact me at 703-524-1864. We look forward to hearing from you.

Sincerely,

Michael R. Gale
Director, Government Relations

American Association of
**Exporters** and
**Importers** 11 West 42nd Street New York, NY 10036 (212) 944-2230
(FAX) 212-382-2606

EUGENE J. MILOSH
President

May 26, 1995

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Technical Corrections to Recent Trade Legislation

Dear Mr. Moseley:

In response to the request by Congressman Crane, Chairman of the Subcommittee on Trade of the Committee on Ways and Means, the American Association of Exporters and Importers ("AAEI") submits the following corrections to the Uruguay Round Agreements Act ("URAA") (P.L. 103-465) and the Customs Modernization Act (P.L. 103-182). These corrections are purely technical and are deficit neutral.

1. **Corrections to provide for an injury test for countervailing duty orders issued under section 701(c) if country later becomes a Subsidies Agreement country.**

Section 261 of the URAA repeals section 303 of the Tariff Act of 1930, as amended. Under prior law, section 303 applied in the case of a country which was not a signatory to the GATT Subsidies Code and contained its own definition of subsidy. In light of the new definition of subsidy in the WTO Agreement on Subsidies and Countervailing Measures, section 303 was deemed by the Administration as no longer necessary, and was therefore repealed. As of January 1, 1995, countervailing duty investigations involving imports from a non-WTO member country are handled under amended section 701(c) of the new law.

Section 753 of the new law creates a mechanism for providing an injury determination for outstanding countervailing duty orders issued under former section 303(a). The statute provides that an injury determination will be made, if requested, when a country becomes a Subsidies Agreement country. However, section 753 fails to provide for an injury determination for countervailing duty orders issued under section 701(c) for countries that later become a Subsidies Agreement country. Thus, the following changes should be made to the statute (changes are underlined and in bold print):

SEC. 271. SPECIAL RULES FOR INJURY INVESTIGATIONS FOR CERTAIN SECTION 303 **OR SECTION 701** COUNTERVAILING DUTY ORDERS AND INVESTIGATIONS.

[...]

"SEC. 753. SPECIAL RULES FOR INJURY INVESTIGATIONS FOR CERTAIN SECTION 303 **OR SECTION 701** COUNTERVAILING DUTY ORDERS AND INVESTIGATIONS.

[...]

"SEC. 753(a)(2). DESCRIPTION OF COUNTERVAILING DUTY ORDERS. -- a countervailing duty order described in this paragraph is an order issued under section 303 **or section 701** with respect to which the requirement of an affirmative determination of material injury ~~under section 303(a)(2)~~ was not applicable at the time such order was issued.

SEC. 753(c). PENDING AND SUSPENDED COUNTERVAILING DUTY INVESTIGATIONS. -- If, on the date on which a country becomes a Subsidies Agreement country, there is a countervailing duty investigation in progress or suspended under section 303 or under section 701 that applies to merchandise which is a product of that country and with respect to which the requirement of an affirmative determination of material injury ~~made under section 303(a)(2)~~ was not applicable at the time the investigation was initiated, the Commission shall -- [...]

2. **Correction to clarify that the CEP profit deduction only applies when the merchandise is imported by a person affiliated with the exporter or producer.**

New section 772(d) of the URAA requires the Commerce Department, in calculating constructed export price ("CEP"), to deduct from the price used to establish CEP (the "starting price") the amount of profit incurred "by or for the account of the producer or exporter, or the affiliated seller in the United States," that is allocable to costs of selling, distribution, and further manufacturing in the United States. Section 772(d)(3) of the new law should be amended to clarify that such profit deduction is not applicable to sales made through unaffiliated consignment importers.

In the case of consignment sales through an unaffiliated importer in the United States, the importer's profit is the commission (minus expenses) earned on the U.S. sales. Under section 772(d)(1)(A), commissions paid for selling merchandise in the United States must be deducted in calculating CEP. To allocate profit of the exporter to an unaffiliated consignment importer, while also deducting the commission paid to such importer, would simply be to deduct twice the same expense.

As the SAA underscores, the purpose of the deductions required by section 772(d) is to ensure that CEP corresponds, as closely as possible, to an arm's length price paid to an exporter by an unaffiliated U.S. entity. Sales through unaffiliated consignment importers are at arm's length. Accordingly, deducting the consignment importer's commission from the prices of such sales produces the desired CEP. Clearly, deducting the importer's commission twice (by deducting an allocation of the exporter's profit also) would constitute a gross miscalculation not intended by the statute.

Consistent with the statutory intent articulated in the SAA, the statute should be corrected to ensure that profit deductions will be made in calculating CEP only when the importer is affiliated with the exporter or producer.

With respect to Section 223 of the URAA, Section 772(d)(3) should be amended to state:

> "(3) the profit allocated to the expenses described in paragraphs (1) and (2), but only if the subject merchandise is imported by a person affiliated with the exporter or producer."

3. **Correction to Section of Customs Modernization Act to Require Customs to Implement Reconciliation as it Pertains to the Assessment of Antidumping and Countervailing Duties.**

The Customs Modernization Act amended 19 U.S.C. § 1484 by introducing a new concept to the entry process know as "reconciliation." Reconciliation will permit customs entries to be liquidated despite the fact that certain information has not yet been submitted to Customs, by allowing importers to elect to provide the information (other than information relating to the admissibility of merchandise) at a later time, i.e., when it becomes available. The importer would then later file a reconciliation statement pertaining to the entry or entries, providing the information needed by Customs to make the appropriate adjustments.

The reconciliation process may also serve as a means of grouping entries together for purposes of the assessment of antidumping and countervailing duties. In this way, the total antidumping or countervailing duty liability on an entry or group of entries could be separated from other issues, and dealt with at the time that the results of an administrative review are finalized, without requiring that the liquidation of the entries be suspended. For entries that include merchandise subject to more than one antidumping or countervailing duty order, separate reconciliation statements could be filed, permitting final payment or refund of the duties owed pursuant to an administrative order to go forward despite the fact that the importer's liability in another case remains unresolved.

The Customs Modernization Act authorizes the Customs Service and the Department of Commerce jointly to determine "such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties." Unfortunately, however, no such regulations have been issued, and the Customs Service currently anticipates that it will not issue the regulations necessary to implement the reconciliation provisions of the Act until 1998.

For this reason, a technical correction should be made to the Customs Modernization Act, which would require Customs to implement reconciliation as it pertains to the assessment of antidumping and countervailing duties no later than July 1, 1996.

Specifically, section 637 of the North American Free Trade Agreements and Implementation Act should be revised to amend section 484(b)(2) of the Tariff Act of 1930 (19 U.S.C. 1484(b)(2)) to read as follows:

> (b) RECONCILIATION.--
>
> . . .
>
> (2) REGULATIONS REGARDING AD/CV DUTIES.-- The Secretary shall prescribe, in consultation with the Secretary of Commerce, such regulations as are necessary to adapt the reconciliation process for use in the collection of antidumping and countervailing duties. <u>Such regulations shall be issued by the Secretary no later than 90 days following the effective date of these amendments, and may be issued prior to the publication of regulations providing for reconciliation for other customs purposes, as set forth in paragraph (1).</u>

4. **Corrections to Enable the Refund of Cash Deposits and Release of Bonds in the Event of a Negative Determination**

Under both the countervailing duty and antidumping duty provisions of the Tariff Act, if either the administering authority or the International Trade Commission issue a negative final determination, the administering authority is directed to: (1) terminate the suspension of liquidation for entries of the subject merchandise, and (2) release any bond or other security and refund any cash deposits paid. See 19 U.S.C. §§ 1671d(c)(2) and (3); 1673d(c)(2) and (3). The purpose of these provisions is to provide for the expeditious refund of cash deposits paid, or bonds posted, following affirmative preliminary determinations.

Unforeseen problems have arisen in at least one recent case that have prevented the Customs Service from refunding cash deposits and releasing bonds following negative determinations. Specifically, in instances involving mixed entries of multiple products, liquidation of the entry may be suspended not only due to a current investigation, but also due to an outstanding antidumping or countervailing duty order on different merchandise in the same entry. In such circumstances, following a negative determination in the investigation, and a termination of suspension of liquidation due to that investigation, the liquidation of the entire entry will nonetheless remain suspended due to the pendency of the outstanding order. When this occurs, the Customs Service takes the position that it cannot release the bonds or refund the cash deposits resulting from the investigation until liquidation, which could be delayed for several years due to administrative reviews of the unrelated order.

Importers then are not only subject to an unintended delay in the refund of their deposits and release of their bonds, but they also must endure this delay without compensation. There is no provision in the statute for the payment of interest on cash deposits paid prior to the issuance of a final order.

This unintended problem can be resolved by providing that, in cases involving negative determinations, where particular entries remain suspended for other reasons, the Customs Service nonetheless should refund cash deposits and release bonds without the necessity of waiting for liquidation.

Section 735, 19 U.S.C. § 1673d, should be amended by adding the following subsection to section (c):

> **"(4) If, notwithstanding the termination of the suspension of liquidation provided for under subsections (2)(A) and (3)(A) liquidation otherwise remains suspended, then the administering authority shall release any bond or other security, and refund any cash deposits required, as provided under subsection (2)(B) or (3)(B), notwithstanding the continued suspension of liquidation."**

A parallel amendment is required in the countervailing duty statute. Section 705, 19 U.S.C. § 1671(d), should be amended by adding the following subsection to section (c):

> "(4) If, notwithstanding the termination of the suspension of liquidation provided for under subsections (2)(A) and (2)(B), liquidation otherwise remains suspended, then the administering authority shall release any bond or other security, and refund any cash deposit required as provided under subsection (2)(B) or (3)(B), notwithstanding the continued suspension of liquidation."

Sincerely,

Eugene J. Milosh

Eugene J. Milosh
President

21880832.W51

TASA

THE AMERICAN SURETY ASSOCIATION
120 Falcon Drive, Unit #3, Fredericksburg, VA 22408 • Telephone: 703/891-4406 Fax: 703/898-2393

May 26, 1995

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

**Technical Corrections H. R. 3450**
**North American Free Trade Implementation Act (P.L. 103-182)**

Gentlemen:

On behalf of the Customs Bond Committee of The American Surety Association ("TASA"), we recommend the following three amendments to H. R. 3450.

TASA represents the sureties producing at least seventy (70) percent of the continuous bonds currently on file with the Customs Service, and are estimated to produce an even higher percentage of the single transaction bonds on file with the Custom Service. As you are aware, sureties play a vital role in the importing process. For the last century most customs transactions have been secured by surety bonds. Bonds guarantee that all duties and taxes will be paid; they provide for liquidated damages which are assessed when importers, warehouse proprietors, carriers and other parties who transact customs business fail to comply with specified provisions of law or regulations. Bonds permit goods to enter through the port with the administrative tasks of appraisement, classification, duty collection, and even admissibility termination to take place in an orderly manner at a later time.

The following technical corrections will assure that the assuredly in customs transactions enter into the electronic environment in the manner originally intended by the Congress in adopting the Modernization Act.

We are very pleased to have an opportunity to supply the committee with these suggested corrections, and are prepared to provide any additional information which might be helpful to the committee.

Respectfully submitted,

Michael Davenport
Chairman, Customs Bond Committee

## PROPOSED AMENDMENTS

Amend Part (a)(2)(D) of Section 411 of the Tariff Act (19 USC 1411(a)(2)(D)), by adding the following phrase after the word "bond":

> "including transmission of transactional data elements to sureties prior to release of cargo to request verification for the surety and to acknowledge acceptance of liability."

Amend Part (b)(1) of Section 413 of the Tariff Act of 1930 (19 USC 1413 (b)(1)), to insert the following word after the comma in the phrase "shipper, and" in the final sentence:

> "sureties"

Amend Part (b)(2) of Section 413 of the Tariff Act of 1930 (19 USC 1413 (b)(2)), to add a new subpart (C):

> "(C) Such permanent implementation shall be accomplished within one year of the date of the enactment of this provision with respect to the electronic program described in Section 411 (a)(2)(D) of this Act."

### Discussion

The purpose of this amendment is to correct a recently surfaced problem which has prevented Customs from implementing the automated filing of bonds as contemplated in the Modernization Act. This amendment is intended to remove that obstacle so that this fiscally important program can be implemented immediately, but not later than one year after adoption of this amendment.

1) **Customs must automate the bonding process or it will have failed to achieve a single entry.** Virtually every Customs transaction is secured by a corporate surety bond. Under existing Customs procedures, every Customs bond is a paper document and that paper document must be filed and stored at Customs. The Customs Modernization Act was intended to cure this important deficiency by specifically providing for automation of the Customs bond process. 19 USC §1411(a)(2)(D).

2) **The Congress anticipated that implementation of the automated bond process would be immediate.** At the time the statute was drafted, introduced and adopted, the Customs Service had worked for over nine years with the surety industry to develop an automated bond procedure. Customs published that procedure as a proposed rule in the Federal Register on January 23, 1993, and the comment period closed long before the Customs Modernization Act was passed by Congress and signed into law by the President on December 8, 1993.

For reasons discussed more fully below, no progress has been made toward final adoption of this procedure. The amendment of Section 413 is intended to eliminate any further delay.

3) **A two-fold purpose would be served by immediate adoption of the ASI procedure:**

> **(a) Complete automation of Customs transactions (i.e., a truly paperless environment)**

There can be no "paperless" environment unless each of the four parties involved in virtually every Customs transaction (importer, Customs broker, importing carrier and corporate surety) can communicate with Customs electronically. Importers, brokers and carriers are fully automated under the Automated Broker Interface (ABI) and Automated Manifest System (AMS). The surety remains the only party excluded from the electronic environment, despite the passage of 18 months since adoption of the Modernization Act.

(b) **Increased protection of the revenues through a system which finally allows Customs to set proper bond amounts and sureties to reasonably underwrite obligations.**

Customs cannot properly set bond amounts or verify surety obligations, and the sureties cannot measure their exposure or underwrite their obligations, unless the bond system is automated. The paper environment does not permit Customs or the sureties to match current importations to past or pending transactions, to measure transactions for setting bond amounts or to underwrite the creditworthiness of bond principals.

The verification process is the crucial element of a successful automated bonding process. Customs confirmed this in its Notice of Proposed Rulemaking (58 FR 5680, 5681 of January 22, 1993):

> "The verification of the single entry bond by the ASI surety will become the key for all ACS processing. If there is a negative response * * * the cargo will not be released until such time as a bond (single entry or continuous) can be produced to satisfy Customs bonding requirements."

To accomplish this critical purpose, the planned procedure for "electronic filing of bonds" set forth specific data elements to be provided to sureties prior to cargo release. "Data Transmitted", Paragraphs IA, IB and IC of the Proposed Automated Surety Interface, supra. The purpose of the transmissions is to provide for direct requests to sureties to acknowledge and accept liability prior to cargo release and acceptance of the bond by Customs. Proposed Sections 113.91 and 113.92 of the Customs Regulations, published as part of the Planned Automated Surety Interface.

Customs has not yet implemented ASI because it believes it is without legal authority to permit a surety to read the information recorded on the bond (or obtain any other related information) before it agrees to sign the bond and file it with Customs. This belief defies logic. If the Customs Service is to adhere to this belief, it must also believe that:

1) Sureties are required to sign bonds and incur obligations before they read the bonds.

2) A surety may read a bond before signing it, only if none of the blanks are filled in (e.g., name and address of principal, bond amount, port of entry, identification of filer or customhouse broker, etc.).

3) The Customs Service may not directly communicate with a proposed surety before that surety is officially obligated on the transaction.

This circumstance clearly was not an intended consequence of the Modernization Act. No federal statute can or should compel a surety to be obligated to the United States before it is informed of the particulars of its obligation.

The law cannot require sureties to wear blind-folders and ear-plugs when it conducts business with importers and Customs. Similarly, the law cannot require Customs to withhold information from a surety which it knows must be available to them in order to conduct business on a reasonable and sound basis. This amendment would dispel any opinions that there is a statutory impediment to the reasonable and efficient conduct of business by Customs and sureties.

**4) Sureties are involved in virtually every Customs transaction, but have not been invited to fully participate in the trade consultation process contemplated by the Congress in defining the implementation of the Modernization Act.** Sureties were not invited to participate in the initial consultations, although in recent months they have generally been included. The amendment to Section 413 (b)(1) is intended to assure the consistent participation of sureties in future consultation.

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**HOUSE OF REPRESENTATIVES**
**COMMITTEE ON WAYS AND MEANS**
**SUBCOMMITTEE ON TRADE**

**STATEMENT OF**
**AUTOALLIANCE INTERNATIONAL, INC.**

REGARDING PROPOSAL TO AMEND THE CUSTOMS AND TRADE ACT OF 1990 TO CLARIFY THE APPLICATION OF CUSTOMS USER FEES (SECTION 111(b)(2)(D)(v) OF THE CUSTOMS AND TRADE ACT, SECTION 1301(b)(8)(D) OF THE CONSOLIDATED OMNIBUS BUDGET RECONCILIATION ACT OF 1985, AND 19 U.S.C. § 58c(b)(8)(D)) TO PROVIDE THAT THE AD VALOREM MERCHANDISE PROCESSING FEE APPLIES ONLY TO THE FOREIGN VALUE OF MERCHANDISE ENTERED FROM A FOREIGN TRADE ZONE.

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International, Inc.
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May 26, 1995

AutoAlliance International, Inc. ("AAI") submits this statement in response to the April 25, 1995 request by Congressman Phil Crane, Chairman of the Ways and Means Subcommittee on Trade, for comments regarding proposed legislation clarifying Congress's intent that merchandise processing fees ("MPF") not be assessed on domestic value or merchandise removed from a foreign trade zone ("FTZ").

AAI believes that the legislative intent to not collect MPF on domestic value is made clear by the language of the Foreign Trade Zones Act, which provides that:

> [A]rticles, the growth, product, or _manufacture of the United States_, on which all internal-revenue taxes have been paid, if subject thereto, _and articles previously imported on which duty and/or tax has been paid_, or which have been admitted free of duty and tax, _may be taken into a zone_ from the customs territory of the United States, placed under the supervision of the appropriate Customs officer, _and whether or not they have been combined with or made part_, while in such zone, _of other articles_, _may be brought back thereto free of quota, duty, or tax_.

19 U.S.C. § 81c (emphasis supplied). Given that duties and fees are to be treated identically under the customs laws,[1] the apparent legislative intent is that merchandise processing fees should not be assessed on domestic or foreign-duty paid merchandise or value upon removal from a FTZ.

The U.S. Customs Service, however, interprets the relevant statutes and regulations so as to assess MPF on the total zone value of items removed from foreign trade zones or subzones, including the domestic portion of removed value. In other words, if foreign goods are processed in a FTZ, any additions in value due to the adding of domestic components or use of domestic labor would be subject to assessment of MPF upon removal from the FTZ. For example, in February of this year, Customs ruled that MPF may be charged on the total zone value a "Big Three" automobile manufacturer removed from its foreign trade subzone. More recently, in May, Customs denied AAI's administrative protests on this same issue even though AAI raised additional and distinguishing arguments in its protests. Section 1022 of the Tax Simplification and Technical Corrections Act of 1993 (H.R. 3419), had it been enacted, would have clarified the law concerning merchandise processing fees so as to preclude this practice.

AAI also wishes to emphasize that the policy consideration underlying the existence of FTZs is to foster manufacturing in the United States which otherwise would occur elsewhere. Imposing an additional fee on labor and value added in the United States does not further this policy. For example, currently one can send domestic components abroad to be assembled, and then re-import the completed product under a tariff provision which allows one to pay duty only on the foreign value. Based on Customs regulations, MPF is also assessed solely on the foreign value in such cases. In other words, if one sent domestic materials to Egypt to be assembled, and then re-imported the final product to the United States, the one would pay MPF solely on the foreign value. But if one sent the same American components to a FTZ or subzone in the United States to be assembled together with foreign materials, then under Customs current practice one would pay merchandise processing fees on the value added by the American components and American labor in

[1] _See_, _e.g._, 19 C.F.R. § 24.23(e).

addition to MPF paid on the foreign value![2] We respectfully urge clarification of the FTZ laws to accord the same treatment to merchandise assembled in a foreign trade zone in the United States as is already provided to merchandise assembled abroad and imported under HTSUS 9802.

Also, it should be noted that, under Customs' current interpretation, MPF may be assessed on total zone value which includes components which are eligible for duty-free treatment under the United States-Canada Free Trade Agreement, even though such components should be entitled to an exemption for MPF. Allowing assessment on such components effectively breaches the United States' responsibilities under its trade agreement with Canada.

For the above reasons, AAI respectfully requests clarification of Congressional intent in this area so as to preclude the assessment of MPF on the following upon their removal from a FTZ:

(1) domestic value added due to use of domestic labor or materials within a foreign trade zone;

(2) domestic merchandise; and

(3) foreign duty-paid merchandise or value added due to the use of foreign duty-paid merchandise within a foreign trade zone.

With respect to the latter category, it should be noted that MPF has already been assessed upon such merchandise. Because there is currently no statutory authority which permits MPF to be assessed twice in such circumstances, to assess MPF on such merchandise twice is not only unfair, but also unjustifiable. Clarifying the law in this fashion would still allow assessment of MPF on privileged and non-privileged foreign merchandise/value upon removal from a FTZ.

Finally, as noted earlier, Title 19 U.S.C. § 81c strongly implies that MPF is to be collected only on non-duty paid foreign value removed from a FTZ. Because the proposed legislation would seek merely to clarify previous Congressional intent, and not to implement a new policy, we urge that any clarifying legislation be made retroactive.

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[2]The particular Harmonized Tariff Schedule of the United States provision referred to herein is 9802.00.80, which provides for "articles assembled abroad in whole or in part of fabricated components, the product of the United States," which meet certain specifications. The regulations at 19 C.F.R. § 10.13 explain, in their examples, that the provision applies to assembly abroad using U.S. components and foreign-made components, such as transistor radios "assembled abroad from foreign-made components and American-made transistors." According to the terms of the tariff provision, duties are assessed on the whole value of the imported finished good less the value of the qualifying American components. For goods imported pursuant to this provision, the regulations at 19 C.F.R. § 24.23(c)(1)(i) and (c)(2) assess the ad valorem MPF only on the same dutiable value--i.e., the total cost of the imported finished good less the value of the qualifying American assemblies. See also 19 U.S.C. § 58c(b)(8)(B)(i) (providing authority for the aforementioned regulations). In summary, for qualifying American components sent abroad and assembled with foreign components, it is possible to import the final assembly paying duty and MPF only on the foreign value. This rule encourages the use of American components.

**Supplement to Statement of AutoAlliance International, Inc.**

The designated representatives of AutoAlliance International, Inc. are as follows:

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The accompanying statement advocates amending the Customs and Trade Act of 1990 to clarify the application of customs user fees (section 111(b)(2)(D)(v) of the Customs and Trade Act, section 13031(b)(8)(D) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and 19 U.S.C. §58c(b)(8)(D)) to provide that the ad valorem merchandise processing fee applies only to the foreign value of merchandise entered from a foreign trade zone. The statement argues that such a clarification is needed to remedy the flawed, current interpretation of applicable law and to help achieve the policy goals meant to be served by applicable law.

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BASF Corporation

BASF

May 19, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Customs and Trade Act of 1990: Proposed Technical Amendments

Dear Mr. Moseley:

In response to Congressman Crane's request of April 25, 1995 for written comments on technical corrections to trade legislation, we are pleased to offer the following comments. BASF Corporation is one of the largest chemical companies in the United States and has recently received approval for foreign-trade zone activity at one of its major manufacturing sites.

We are writing to express our support for the proposed technical correction to the Customs and Trade Act of 1990 regarding the application of the Customs ad valorem merchandise processing fee to goods entering the United States from a foreign-trade zone (section 111(b)(2)(D)(v) of the Customs and Trade Act of 1990, section 13031(b)(8)(D) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and 19 U.S.C. 58c(b)(8)(D) noted). We support the clarification of the application of the customs user fee (merchandise processing fee) to only the foreign value of the merchandise entering the United States from a foreign-trade zone. It was clearly never intended for the merchandise processing fee to be applicable to the value of domestic materials, labor, overhead and profit associated with goods manufactured in a foreign-trade zone. By specifically stating that this fee is applicable only to the foreign value of the merchandise entering the United States, this technical correction will support the intent of the above-cited legislation and will clarify any confusion that has since resulted.

We thank you for your kind consideration of these comments.

Very truly yours,

Richard J. Salamone

Richard J. Salamone
Manager, Customs & International
Regulatory Compliance

3000 Continental Drive - North. Mount Olive, New Jersey 07828-1234 (201) 426-2600

May 24, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

BMW of North America, Inc., and BMW Manufacturing Corporation support the amendment to the Customs and Trade Act of 1990 which clarifies the application of customs user fees (section 111(b)(2)(D)(v) of the Customs and Trade Act, section 13031(b)(8)(D) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and 19 U.S.C. 58c(b)(8)(D). This amendment deals with the correct application of the advalorem merchandise processing fee (MPF).

We do not feel that it was ever envisioned that the MPF would be applied to the domestic value of merchandise being entered from a foreign-trade zone (FTZ). We strongly believe that Customs' feelings on this matter agree with ours. We suggest that Customs' statement that the MPF should not be collected on domestic agricultural products was misinterpreted in their field office to mean that the fee should, therefore be collected on all other domestic products. The intention of Customs from the start, we believe, was to have the MPF apply only to the foreign value contained in products brought into the commerce of the United States from FTZs.

This is also the intent of Congress as evidenced in the NAFTA. Under NAFTA, the MPF for Canadian goods is reduced to 0.0%, and the MPF for Mexican goods remains at 0.19% even though, for the rest of the world, the MPF just rose to 0.21%. If MPF is collected on domestic merchandise being imported from an FTZ, Canadian and Mexican goods actually get *more preferential* treatment as to the MPF than do goods of U.S. origin! This CANNOT be the intent of Congress!

In addition, the necessity of paying MPF on domestic content requires BMW of North America, Inc., and BMW Manufacturing Corp. to have to show the total zone value of the vehicles exiting their various zone operations. This information is "business confidential" and, in the wrong hands, could be detrimental to the competitiveness of both companies.

We urge the passage of this amendment as being in the best interest of companies doing business in United States foreign-trade zones.

Sincerely,

Donnie B. Turbeville

Donnie B. Turbeville
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c Dennis Helfman, BMW NA
David Cordero, BMW NA
David Ostheimer, Lamb & Lerch
Brandi Hanback, NAFTZ

# Central Florida Foreign-Trade Zone, Inc.

2300 Virginia Avenue • Fort Pierce, Florida 34982 • Phone: (407) 462-1732 • Fax: (407) 462-1718

May 23, 1995

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: SUPPORTIVE COMMENTS ON THE TECHNICAL CORRECTIONS LEGISLATION PRESENTED BY CONGRESSMAN PHILIP CRANE

Dear Mr. Moseley:

The above legislation clarifying the merchandise processing fee as it applies only to the foreign value of merchandise entered from a foreign trade zone is needed and supported.

Central Florida FTZ is a general-purpose foreign trade zone (in application), and we strongly support the above legislation. The technical correction is necessary to resolve the intent of the law. Without passage of the technical correction legislation we are forced into a position of paying a fee on products with value added domestically. To demonstrate how faulty this is, consider the following: zone users are required to pay merchandise processing fees on the <u>domestic value</u> added in the zone, but the fees are not applied to Canadian goods. This is unconscionable. Due to NAFTA, the MPF has been completely phased out, yet we are charged a fee on materials, labor, overhead and profit associated with our own country.

Passage of this legislation is necessary to level the playing field for American companies and keep us competitive in the marketplace.

Thank you for your time and consideration in this matter.

Sincerely,

CENTRAL FLORIDA FOREIGN-TRADE ZONE, INC.

By: ________________________
John Swart, Director

JSS:pm
cc: Morris Adger

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

TECHNICAL AMENDMENTS
CUSTOMS AND TRADE ACT OF 1990,
AS AMENDED BY
URUGUAY ROUND AGREEMENTS ACT OF 1994
(COMMITTEE ADVISORY NO. TR-8)

STATEMENT OF CENTRAL GULF LINES, INC.
AND WATERMAN STEAMSHIP CORPORATION.

I

## Introduction

In response to the Committee's Advisory No. TR-8, Central Gulf Lines, Inc. (Central Gulf) and Waterman Steamship Corporation (Waterman) submit this statement in support of the attached proposed technical amendment to Section 484E of the Customs and Trade Act of 1990, 19 U.S.C. 1466(h), as recently amended by Section 112, Title I, Subtitle B of the Uruguay Round Agreements Act of 1994.

Central Gulf and Waterman are both citizens of the United States as defined in Section 2 of the Shipping Act, 1916, 46 U.S.C. 802. The two companies are subsidiaries of International Shipholding Corporation (ISC), which is also a citizen of the United States, and their corporate headquarters are located in New Orleans, Louisiana.

Central Gulf and Waterman are both engaged in the LASH (Lighter Aboard Ship) method of ocean transportation. Central Gulf placed the world's first two LASH vessels in operation in 1969 and 1970 and has continued as a leading owner and operator of this type of waterborne transportation. Currently, ISC and its subsidiaries operate ten large mother LASH vessels and a fleet of approximately 1,600 LASH barge cargo containers. In the LASH system, each mother LASH vessel carries between 83 and 89 LASH barge containers. The barges, with cargo capacity of 375 net tons, are towed by tugboats between ports and on inland waterways to various shipping points where they are loaded with cargo and returned to the oceangoing mother ship. The barges are hoisted aboard ship by a special gantry-type crane and transported overseas where the transportation process is reversed.

The mother LASH ships do not require special docks or terminals, and their LASH barge cargo containers are generally loaded and unloaded while the mother ship is anchored in rivers, light traffic port areas or immediately offshore. LASH cargo rarely requires transshipment, moving from origin to destination in the same LASH barge cargo container.

Central Gulf operates three U.S.-flag LASH vessels and a supporting fleet of LASH barge cargo containers under time charter arrangements with the U.S. Navy's Military Sealift Command. Waterman, in turn, operates four U.S.-flag LASH vessels and a fleet of LASH barge cargo containers in regularly-scheduled liner service between U.S. Atlantic and Gulf Coast ports and the Middle East, India, Pakistan, Bangaledesh and Southeast Asia. A variety of general bulk and project cargo is transported outbound while rubber, coffee and other products are carried inbound. In addition, Waterman operates a fifth U.S.-flag LASH vessel under time charter to the Military Sealift Command.

Another ISC subsidiary, Forest Lines, Inc., operates two large international flag LASH vessels in trans-Atlantic service. Outbound, the vessels and their U.S.-flag LASH barge cargo containers (chartered from Central Gulf) carry a variety of cargoes. Inbound, they carry general cargoes, primarily steel from European ports to the United States.

## II

## CONGRESS ENACTED SECTION 484E OF THE CUSTOMS AND TRADE ACT OF 1990 TO END UNJUST, DESTRUCTIVE TARIFF DISCRIMINATION AGAINST U.S.-FLAG LASH BARGE CARGO CONTAINERS AND UNFAIR, UNJUSTIFIABLE, OPPRESSIVE TARIFF ASSESSMENTS AGAINST VESSEL REPAIR PARTS, MATERIALS AND EQUIPMENT NECESSARILY PURCHASED ABROAD.

In 1990, evidence was presented to the Subcommittee on Trade of the House Ways and Means Committee which established that the Vessel Repair statute, 19 U.S.C. 1466, was imposing serious tariff discrimination on U.S.-flag LASH barge cargo containers and extremely unfair, unjustifiable tariff assessments on vessel repair parts, materials and equipment necessarily purchased by U.S.-flag vessels overseas.[1]

### A. Tariff Discrimination Against U.S.-Flag LASH Barges.

With reference to LASH barges, the Committee was advised that, in the U.S.-flag liner industry, several U.S. liner companies operate containerships to transport freight, while others (such as Central Gulf and Waterman) utilize the LASH system of ocean transportation. Containerships, of course, are large mother vessels which carry their cargoes in various types of containers, principally over-the-road boxes and trailers. LASH vessels, on the other hand, transport their cargoes in LASH barge containers. Obviously, the two types of containers serve the same transportation purpose and function.[2]

Under the Vessel Repair statute, 19 U.S.C. 1466, however, LASH barge containers were subject to ad valorem duty at the high 50% rate when, during the course of any ocean voyage, they were required to purchase foreign replacement equipment or obtain essential repairs in a foreign shipyard. But, the Vessel Repair statute was not even applicable to containership cargo containers, so containership operators were able to purchase foreign replacement equipment, and to obtain necessary foreign repairs for those containers, duty-free. This patent tariff discrimination placed LASH operators at a significant economic and competitive disadvantage because they regularly compete against both the aforesaid U.S.-flag containership operators and foreign flag carriers (to whom the Vessel Repair statute likewise is not applicable) for available cargoes.[3]

Moreover, the record before this Committee in 1990 demonstrated that, in addition, regulations issued by the U.S. Customs Service under the Vessel Repair statute imposed extremely burdensome and costly record-keeping and inspection requirements on U.S.-flag LASH operators from which both competing U.S.-flag containerships and foreign flag vessel operators were totally exempt. In this regard, the Customs Service's Vessel Repair regulations, 19 C.F.R. 4.14 et seq., contained a special section applicable to LASH barge cargo containers alone. Under that regulation, each time a mother LASH vessel returned to the United

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1/ See Ways and Means Committee Print No. 101-32, 101st Cong., 2d Sess., p. 21 (6/25/90).

2/ Id.

3/ Id.

States at the end of a voyage, <u>it was required to file separate Vessel Repair entries and declarations for both the mother vessel itself and each of its complement of 83 to 89 LASH barge containers</u>, irrespective of whether foreign equipment or repairs had been purchased for each barge during the course of that voyage.[4/]

In addition, in 1985, the Customs Service published Information Bulletin No. 85-006 which required LASH operators (a) to inspect each barge prior to loading aboard the mother vessel each time the barge container was carried on a foreign voyage, and on the basis of that inspection, (b) to certify in writing that each barge was "in seaworthy condition" when it left the United States. Without that regulatory inspection and certification, LASH operators were precluded from contending that foreign repairs or replacement parts thereafter acquired for a barge container were "necessary for the safety and seaworthiness of the vessel" under the Vessel Repair statute, 19 U.S.C. 1466(d).[5/]

Thus, the record before this Committee in 1990 established that, in order to comply with the Vessel Repair statute and the supporting regulations, Central Gulf and Waterman had to employ a special staff of employees simply to handle the burdensome load of government paper work. Again, the record demonstrated that competing ocean carriers were not required to comply with these onerous, expensive LASH barge rules and regulations, so they enjoyed an additional competitive advantage over U.S.-flag LASH operators who were compelled to comply.[6/]

Finally, the record before this Committee in 1990 suggested that the Vessel Repair statute's discriminatory LASH barge provisions also surely resulted in <u>unprofitable</u> expenditure of federal revenues and scarce resources by the U.S. Customs Service. In this connection, the Committee was advised, at p. 22 of the 1990 Committee Print:

> "Because the U.S. Customs Service must also continuously enforce the statute's requirements against...hundreds of LASH barges, it is certainly reasonable to assume that necessarily the Service also spends a disproportionate amount of its own collection and supervisory budget under 19 U.S.C. 1466 on these activities. If this assumption is correct, then the net revenues the government ultimately gains each year from this statutory discrimination are minimal at best since gross duty collections on foreign repairs to LASH barges are, from the standpoint of federal budget requirements, of the <u>de minimis</u> variety in any event."

Based on this record, and similar evidence presented in the Senate by Chairman Breaux of the Senate Subcommittee on Merchant Marine, Congress enacted Section 484E of the Customs and Trade Act of 1990, Pub.L. 101-382, Title IV, which became effective on August 20, 1990, and provided:

> "Sec. 484E. <u>Foreign Repair of Vessels.</u>
>
> "(a) <u>In General</u> — Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) is amended by adding at the end thereof the following new subsection:
>
> "(h) The duty imposed by subsection (a) of this section shall not apply to —

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4/ <u>Id</u>, at p. 22, n. 4.

5/ <u>Id</u>.

6/ <u>Id</u>, at p. 22.

> "(1) the cost of any equipment, or any part of equipment, purchased for, or the repair parts or materials to be used, or the expense of repairs made in a foreign country with respect to LASH (Lighter Aboard Ship) barges documented under the laws of the United States and utilized as cargo containers...."

On April 20, 1990, on the Senate floor, Chairman Breaux supported the legislative provision which ultimately became Section 484E of the Customs and Trade Act of 1990 and emphasized that its enactment would "end the discriminatory application of Section 466 of the Tariff Act of 1930...to U.S.-flag LASH barges."[7]

B. Unjustifiable, Oppressive Duty Assessments Against Vessel Parts, Material and Equipment.

Similarly, in 1990, evidence was presented to this Committee regarding "The Spare Parts Dilemma Under The [Vessel Repair] Statute."[8] The Committee was advised that large ocean liner vessels must carry spare parts, material and equipment which can be utilized, where and when necessary, on long voyages or during port calls in foreign countries.[9] Under the Vessel Repair statute, 19 U.S.C. 1466(d)(2), vessel parts and equipment manufactured or produced here in the United States and installed overseas by residents of the United States or the vessel's regular crew were clearly not subject to duty. But, the Customs Service interpreted the Vessel Repair statute, 19 U.S.C. 1466, to mandate assessment of the high 50% ad valorem duty rate on the same American-made parts and equipment if same were installed by foreign workers in a foreign shipyard.[10]

The confusion and inequity involved for U.S.-flag vessel operators were magnified by the fact that, for economic reasons, many U.S.-flag vessels were constructed in recent years in foreign shipyards. In those instances, many spare parts or repair parts for those vessels simply could not be obtained in the United States, so they had to be purchased abroad. Under Customs' rules and decisions, foreign parts and equipment acquired before newly-built vessels were documented under the U.S. flag were not subject to duty under the Vessel Repair statute, but parts and equipment thereafter purchased from foreign suppliers and brought to the United States by the vessel itself were held to be dutiable at the oppressive 50% ad valorem rate under the Repair statute.[11]

However, if those same foreign parts and equipment were delivered to the United States by air or aboard another vessel, they could enter this country at the far lower commodity duty rates specified by the Harmonized Tariff Schedule.[12] But then, under Customs' interpretation of the Vessel Repair statute, they became

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7/ See Congressional Record, 4/20/90, at p. S4715.

8/ See WMCP 101-32, at p. 22.

9/ Id.

10/ Id., at p. 23.

11/ Id.

12/ Id.

subject to "double duty" if they were later installed on a U.S.-flag vessel in a foreign shipyard.[13]

Confronted with these confusing, debilitating tariff rules and assessments, the U.S. maritime industry as a whole urged this Committee to exempt vessel spare repair parts and equipment from duty liability under the Vessel Repair statute.[14] Consequently, when the Customs and Trade Act of 1990 was enacted, Section 484E(a) also provided:[15]

> "Sec 484E. Foreign Repair of Vessels
>
> "(a) In General - Section 466 of the Tariff Act of 1930 (19 U.S.C. 1466) is amended by adding at the end thereof the following new subsection.
>
> "(h) The duty imposed by subsection (a) of this section shall not apply to — ....
>
> "(2) the cost of spare repair parts or materials... which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in the United States, at sea, or in a foreign country, buy only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country."

On the Senate floor, Chairman Breaux emphasized that the 1990 legislation was thus intended "to eliminate" unfair, oppressive duty assessments on vessel spare parts imported by U.S.-flag vessel operators from abroad.[16] The Senate Finance Committee Report issued in support of the legislation stated, in turn: "[The bill] exempts vessel spare repair parts and materials from application of the 50 percent vessel repair duty provided that duty was paid under the appropriate HTS commodity classification upon first entry into the United States."[17] The Senate report goes on to state, at p. 38:

> "This section applies to spare parts carried aboard an individual vessel as well as to fleet spare parts and materials stored on land, provided they are intended for installation or use aboard a cargo vessel. This section is intended to ensure that vessel owners will pay duty on such parts and materials only once, at the time of first entry into the United States."

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13/ As the 1990 record before this Committee demonstrates, on April 19, 1989, Customs issued a set of "easily applied rules," No. 5 of which stated:

> "5. The dutiability of foreign made repair parts/materials under § 1466 is not affected by the fact that they may have been previously imported, duty paid, into the United States and then exported for installation or placement aboard a vessel. They are subject to duty ["double duty"] under § 1466 upon first arrival of the vessel."

14/ WMCP 101-32, pp. 20-36.

15/ See 19 U.S.C. 1466(h)(2).

16/ See Congressional Record, 4/20/90, at p. S4715.

17/ S.Rept. 101-252, 101st Cong., 2d Sess., p. 38.

III

**AT THE REQUEST OF THE U.S. TRADE REPRESENTATIVE, SECTION 484E WAS INITIALLY ENACTED IN 1990 WITH A TWO-YEAR TIME LIMITATION. HOWEVER, WHEN THE TRADE REPRESENTATIVE FAILED, AS ANTICIPATED, TO NEGOTIATE TOTAL REPEAL OF THE VESSEL REPAIR STATUTE BY THE END OF 1992, CONGRESS IMMEDIATELY SOUGHT TO EXTEND THE 1990 EXEMPTIONS; THE CUSTOMS SERVICE ADMINISTRATIVELY SUSPENDED APPLICATION OF THE REPAIR STATUTE TO LASH BARGES AND VESSEL REPAIR PARTS; AND IN 1994, CONGRESS WAS FINALLY ABLE TO LEGISLATE PERMANENT EXEMPTIONS.**

When the Customs and Trade Act was before Congress in 1990, the U.S. Trade Representative (USTR) was attempting to negotiate with the European Union, Norway, Finland, Sweden, Japan and Korea a multilateral shipbuilding agreement that would eliminate ship construction and repair subsidies and other distortive trade practices. One of the USTR's "bargaining chips" was proposed total repeal of the United States' Vessel Repair statute, 19 U.S.C. 1466.

Thus, when Congress proposed to amend that statute in 1990 to exempt LASH barge repairs and vessel spare parts, the USTR requested that, in order not to dilute the United States' bargaining position in the aforesaid negotiations, an initial two-year limitation be placed on those exemptions. In support of that request, the USTR estimated that, by the end of 1992, an international agreement would be in place and the Vessel Repair statute would probably be repealed *in toto*.[18/]

Unfortunately, however, the aforesaid negotiations were more difficult that predicted. Indeed, in April 1992, those negotiations were actually broken off for a one-year period, and they were not resumed until the summer of 1993.

Consequently, Congress — which in response to the USTR's requests, had placed an initial two-year limitation on the 1990 LASH barge and spare parts exemptions from the Vessel Repair statute — immediately moved to extend those exemptions or make same permanent. Thus, on June 30, 1992, the Ways and Means Committee favorably reported the Miscellaneous Tariff Act of 1992, H.R. 4318, §2108 of which extended the two exemptions through December 31, 1994. The Committee Report, H.Rept. 102-634, 102d. Cong. 2d Sess., stated at p. 88:

> "This provision extends the current duty exemption through December 31, 1994. The duty exemption is expanded to also apply to spare parts necessarily installed prior to first entry into the United States. Spare parts not installed may be inspected by the U.S. Customs Service on-board ship; unloading them on the dock is not mandatory."

The House thereupon passed that legislation without objection. However, along with most other important bills, it died in the Senate in late 1992 as a result of legislative gridlock.

On November 25, 1992, Chairman Breaux of the Senate Merchant Marine Subcommittee thus wrote to the U.S. Customs Service requesting that enforcement of the Vessel Repair statute against LASH barge repairs and vessel spare parts and equipment be administratively suspended until Congress can "continue [these] duty exemptions." The Customs Service agreed, so liquidation of entries and collection of duty on those exempt items remained suspended during 1993, 1994 and the early months of 1995.

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18/ The two-year limitation was contained in Section 484 E(b) of the Commerce and Trade Act of 1990, 19 U.S.C. 1466 note.

Legislative gridlock continued to plague the Congress through 1993 and most of 1994. On February 24, 1993, however, Senator Breaux introduced S.428, 103d Cong., 1st Sess., and on March 1, 1993, Representative Tauzin introduced H.R. 1160, both of which proposed to make the LASH barge repair and vessel repair parts exemptions permanent. Mr. Tauzin's bill was referred to this Committee for action.

Finally, therefore, in late 1994, Congress enacted the GATT Uruguay Round Agreements Act, Pub.L. 103-465, Section 112, Title I, Subtitle B of which made both exemptions permanent. In addition, Section 112 (b) added a new subsection (3) to 19 U.S.C. 1466(h), which reads as follows:

> "(b) Exemption For Certain Spare Parts - Section 466(h) of the Tariff Act of 1930 (19 U.S.C. 1466(h)) is amended...
>
> "(3) by adding at the end the following new paragraph:
>
> "(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from a foreign country."[19]

IV

**ENACTMENT OF THE PROPOSED TECHNICAL AMENDMENT IS ESSENTIAL.**

When Congress enacted the GATT bill late last year, Section 112 — like a host of other provisions in that legislation — made the permanent LASH barge and spare parts exemptions effective "on or after the date of the entry into force of the WTO Agreement with respect to the United States" (See § 112(a)(3), Pub.L. 103-465, Title I, Subtitle B). That date, of course, was January 1, 1995.

As a result, the U.S. Customs Service — which administratively suspended enforcement of the Vessel Repair statute against LASH barge repairs and vessel spare parts and equipment during 1993 and 1994 until Congress could act — is now contending that it has no alternative but retroactively to enforce the statute against all LASH barge and spare parts entries made during that same two-year period.

Obviously, therefore, unless Congress enacts the technical amendment Central Gulf and Waterman now propose, the Customs Service will soon reimpose unjust tariff discrimination and unjustifiable duty collections on both LASH barge cargo containers and vessel repair parts which Congress intended to "end" and "eliminate" in 1990. Moreover, without the technical amendment, the U.S.-flag maritime industry will be unfairly retroactively penalized for Congressional gridlock that arbitrarily prevented effective legislative action in this instance until the GATT bill was presented for Congressional approval in late 1994. Finally, without the technical amendment, the Vessel Repair statute will be discriminatorily and retroactively reimposed in 1995 on items Congress exempted in 1990, and at a time when the USTR has finally

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19/ It is noteworthy that now pending before Congress for approval or disapproval is an international agreement finally negotiated by the USTR in late 1994, known as the OECD Shipbuilding Agreement, which inter alia, provides for gradual total repeal of the Vessel Repair Act, 19 U.S.C. 1466.

negotiated (in 1994) an international agreement that requires total repeal of the entire Vessel Repair law.[20]

V

**UNDER THE CIRCUMSTANCES PRESENT HERE, THE TECHNICAL AMENDMENT WILL NOT RESULT IN A REVENUE LOSS. HOWEVER, BECAUSE OF THE IMPORTANCE OF EARLY ENACTMENT OF THIS STATUTORY CLARIFICATION, A REASONABLE REVENUE OFFSET IS PROPOSED TO ASSURE CONGRESSIONAL ACTION THIS YEAR.**

As stated above, a two-year limitation was placed on the two tariff exemptions here involved in 1990 solely to accommodate the USTR. In 1992, the House approved an extension of said exemptions through 1994, but legislative gridlock prevented final Congressional approval. The U.S. Customs Service administratively suspended enforcement of the Vessel Repair statute against these two exemptions during 1993-1994, and now Congress had made the two exemptions permanent. Finally, Congress is now considering an international agreement negotiated by the USTR which provides for total repeal of the Vessel Repair law.

Under all these circumstances, it is respectfully submitted that enactment of the technical, clarifying amendment now proposed cannot reasonably be construed to result in any recognizable revenue loss for the government.

In any event, as the Customs Service will hopefully confirm, any revenues now retroactively collected on these exemptions for the period 1993-1994 will be relatively de minimis — and in order to collect those relatively small revenues, both the government and the U.S. maritime industry will be required to expend significant amounts in administrative and judicial proceedings.

Accordingly, the Committee is urged to treat the attached proposed amendment as "revenue neutral," i.e., it will not result in any significant revenue loss to the government.

If, for any reason, the Committee cannot follow that course in this instance, the following germane "revenue offset," which was apparently acceptable to the Committee staff as recently as last year; which does not require any new tax or tax increase — and for which revenue estimates were obtained from the Joint Committee on Taxation in July 1994 — is submitted for the Committee's consideration:

> Nonresident aliens and foreign corporations claiming benefit from treaties or reciprocal arrangements that might provide U.S. tax exemption for U.S.-source shipping income, would have the exemption denied and deductions and credits disallowed, if the necessary returns claiming the exemption are not filed. To enable the IRS to identify foreign-flag ships engaged in shipping to and from the U.S., the proposal would also require the U.S. Customs Service to supply the IRS with manifest data in a usable form.

As stated above, in July, 1994, the Joint Committee on Taxation released the following revenue estimates for this proposal:

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20/ In addition, the amendment is necessary to clarify the spare parts exemption to make it plain that said exemption covers parts, materials and equipment.

In Millions of Dollars

| 1995 | 1996 | 1997 | 1998 | 1999 | 1995-99 |
|---|---|---|---|---|---|
| 1 | 2 | 4 | 5 | 6 | 18 |

## Conclusion

Central Gulf and Waterman urge the Committee to adopt and favorably report the attached technical, clarifying amendment as part of any legislation which might result from the current proceedings or any other relevant proceedings.

## PROPOSED TECHNICAL AMENDMENT

### CUSTOMS AND TRADE ACT OF 1990, AS AMENDED BY URUGUAY ROUND AGREEMENTS ACT OF 1994.

A. Section 484E(b) of the Customs and Trade Act of 1990, Pub.L. 101-382, Title IV, 19 U.S.C. 1466 note, as amended by Section 112(a) of the Uruguay Round Agreements Act of 1994, Pub.L. 103-465, Title I, Subtitle B, is further amended —

(1) by striking "December 31, 1992" in paragraph 2(B), and by substituting therefor "December 31, 1994."

B. Section 484E(a) of the Customs and Trade Act of 1990, Pub.L. 101-382, Title IV, 19 U.S.C. 1466(h), as amended by Section 112(b)(3) of the Uruguay Round Agreements Act of 1994, Pub.L. 103-465, Title I, Subtitle B, 19 U.S.C. 1466(h)(3), is further amended so paragraph (3) reads as follows:

"(3) the cost of spare parts, equipment or materials installed on a vessel before the first entry of such parts, equipment or materials into the United States, but only if duty is paid, or a bond or other acceptable security is posted, under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part, equipment or materials purchased in, or imported from, a foreign country."

CHRYSLER CORPORATION

**Chrysler Corporation**
Procurement and Supply

May 16, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

**Subject: Payment of Merchandise Process Fees on domestic material, labor, overhead, G&A, and profit**

Dear Mr. Moseley:

The following is submitted in response to Congressman Philip M. Crane's request for written comments concerning technical corrections to the recent trade legislation. My company supports the legislation in general and in particular the clarification that the application of Customs ad-valorem merchandise processing fee (Section 111(b) (2) (D) (V) of the Customs and Trade Act, Section 1303 (b) (8) (D) applies <u>only</u> to the foreign value of merchandise entered from a foreign trade zone.

We believe it was clearly never intended for the merchandise processing fee to be charged on domestic materials, labor, overhead, profit, general and administration cost associated with merchandise produced in foreign trade zones. However, due to no specific language in the original bill, it has created additional competitive disadvantage and confusion to those of us competing in the world market place with product manufactured in the U.S. This is the reason the technical correction is necessary, in order to further the intent of the laws and regulations concerning FTZs and payment of merchandise processing fees.

If you have any questions, you may contact me at the address below or phone (205)464-2230 or FAX (205)464-2119.

Sincerely,

J.R. Douthit
Foreign Trade Zone Administrator

cc: B.E. Hale
NAFTZ

100 Electronics Boulevard
P.O. Box 240001
Huntsville, Alabama 35824-6401

CHRYSLER
CORPORATION

Chrysler Corporation
Customs Department

May 19, 1995

Mr. Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington D.C. 20515

Re: Technical Corrections to the Customs and Trade Act of 1990

Dear Sir:

This letter concerns the proposed legislation to clarify 19 U.S.C. 58c(b)(8)(D) (the application of customs user fees to goods withdrawn from U.S. Foreign Trade Zones).

Historically, Customs assessed duty and fees against the value of non-duty-paid foreign goods brought into a FTZ. A Chrysler automobile, for example, may contain from $400.00 to $2000.00 of 'zone-tracked' parts. Under Customs interpretation of the law as it applies to user fees and FTZ's, however, Chrysler has had to pay user fees on the full value of vehicles made in the FTZ. That value may range from $15,000 to $20,000.

The additional assessments charged in 1993 against FTZ entries from 1989 and 1990 retroactively and unexpectedly increased the user fee cost of an already sold vehicle by a factor of up to 50. In some cases, the increased user fee eliminated the FTZ benefit altogether.

Chrysler and other U.S. manufacturers who received FTZ benefits during 1989 through 1990 will likely litigate this issue should correcting and clarify changes not be made to the law. There are millions of dollars, none recoverable from customers, at stake.

Accordingly, Chrysler begs that the proposed amendment to the Customs and Trade Act of 1990 concerning customs user fees be considered and approved by Congress and be applied retroactively to entries liquidated by Customs.

Should you have any questions relative to this matter please do not hesitate to contact the undersigned.

Respectfully,

Chrysler Corporation

R.W. Ruger

R.W. Ruger, Customs
Regulatory Specialist

CIMS 450-06-05 Phone: 810-977-5139
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Coastal
The Energy People

May 25, 1995

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: SUPPORTIVE COMMENTS ON THE TECHNICAL CORRECTIONS LEGISLATION PRESENTED BY CONGRESSMAN PHILIP CRANE

Dear Mr. Moseley,

Coastal Refining and Marketing, Inc. supports the technical corrections legislation presented by Congressman Philip Crane and strongly objects to the use of value added costs being applied to importation fees for the following reasons:

1. The Merchandise Processing Fee is, by definition, a fee for service. It is intended to defray Customs' administrative costs incurred relating to Foreign Trade Zone activities resulting from receipts of foreign goods. It is not intended to be a source of additional or extra-ordinary income for Customs as is the case when the Fee is applied to domestic content.

1. The current method of calculating the Merchandise Processing Fee (MPF) is based upon the FOB price at Port of Origin under the principles of FOB cost calculations for Commercial Invoices and has been the accepted standard for the importing trade for years.

2. The FOB price is required for C.F. 7501 entry preparation and is shown as the Net Entered Value on the entry. There is no need to magnify the difficulty of entry preparation by requiring additional base cost calculations.

3. If the MPF does not generate enough money to cover the Merchandise Processing costs incurred by Customs then the fee rate should be increased with proper justification, not the base value; nor should the basis for calculating the value be expanded to include domestic content.

4. Determining exactly what represents a value added cost would generate confusion and require additional determinations by Customs as well as possibly additional legislation on identifying costs and calculating value added base amounts.

5. There would be additional responsibility for Customs to monitor

**Coastal Refining & Marketing, Inc.**
A SUBSIDIARY OF THE COASTAL CORPORATION
P.O. BOX 109 • CORPUS CHRISTI, TX

and audit the import industry's method of creating a value added base amount. It would actually create additional Merchandise Processing costs itself!

6. NAFTA importation benefits would be compromised since the value added cost would generate a MPF fee even though the costs prior to importation (the FOB cost) would be exempt. This would distort the intent of NAFTA significantly.

7. The Corps of Engineer's Harbor Maintenance Fee (HMF) is also based upon the FOB Port of Origin price. If value added costs are applied to it, then the same arguments would apply as to the MPF. Also, if the fee calculation for the HMF is kept at the FOB basis, then if the MPF uses value added costs, two different sets of calculations would be necessary, thereby adding another level of confusion, and inconsistency, for importers.

8. Modification of the base cost may be seen as a potential revenue generator and as such goes to the heart of GATT, NAFTA and all other existing international trade agreements that use tariffs to control trade limits which affect import revenues. By raising the fee base it would be considered a hidden tariff in the form of importation and administrative fees; this would clearly violate the spirit of GATT and NAFTA.

For these reasons, Coastal Refining and Marketing, Inc., as an importer and a United States industrial entity strongly objects to any inclusion of domestic content or value added content in existing fee for service calculations and supports Congressman Philip Crane's Technical Corrections legislation.

Sincerely,

John M. Parker
COASTAL REFINING AND MARKETING, INC.

# BEFORE THE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON TRADE (May 26, 1995)

# PROPOSED TECHNICAL CORRECTION TO THE NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTATION ACT

**(Advisory TR-8, Dated: April 25, 1995)**

SUBMITTED BY

DE ANGELUS, SCHAFFER & ASSOCIATES
A DIVISION OF LIVINGSTON TRADE SERVICES
THE WILLARD OFFICE BUILDING
SUITE 1150
1455 PENNSYLVANIA AVENUE, N.W.
WASHINGTON, DC 20004
(202) 783-2000

ON BEHALF OF

THE COMMITTEE OF AMERICAN BUSINESS
FOR EQUAL TREATMENT UNDER NAFTA
850 N. ROCHESTER ROAD
CLAWSON, MI 48017

## INTRODUCTION

Currently, under the U.S. Customs Service's (Customs) interpretation of Section 202(a)(2)(A) of the North American Free Trade Agreement (NAFTA) Implementation Act in conjunction with Section 3 of the Foreign Trade Zones Act, (19 U.S.C. 81(c)) automobiles manufactured in a Foreign Trade Zone (FTZ) within the United States and later exported to Canada are dutiable on their full value, including domestic content, upon subsequent reentry into the United States. As a result, importers of those automobiles pay duty on 100 percent of the value of the automobile in spite of the fact that they frequently contain more than 90 percent North American parts.

## HISTORY

Until recently, all American made automobiles have been treated as duty free or dutiable on only the foreign content upon reentry into the United States. Vehicles which were manufactured in FTZ's were treated no differently than vehicles which were not manufactured in FTZ's.

## PRESENT LAW

In the NAFTA Implementation Act Special Rules section of the Rules of Origin provisions, Section 202(a)(2)(A), NAFTA preferential tariff treatment is denied to goods manufactured in a United States FTZ even though they would qualify under all other requirements of NAFTA. This provision was added to protect the revenue on the value of <u>foreign</u> components used in goods produced in FTZ's when such goods are entered for consumption in the Untied States (see 139 Cong. Rec. S 16092). Customs has interpreted this section in conjunction with provisions of the Foreign Trade Zones Act (19 U.S.C. 81(c)) to disallow credit for the value of the domestic content of automobiles being reentered from Canada when assessing duty. Accordingly, these automobiles, although they may be greater than 90 percent North American content, are being treated as wholly foreign for duty purposes. By contrast, a Canadian or Mexican produced automobile would be duty free under NAFTA with even as much as 49 percent foreign content.

Automobiles produced in a United States FTZ can be entered directly into the Customs Territory of the United States from the FTZ by paying duty only on the foreign content. However, when those automobiles are exported to Canada and then reentered into the United States, the NAFTA provision becomes applicable and, apparently, the opportunity to import them into the Customs Territory of the United States by paying duty on only the foreign content is lost.

## IMPACT

The result of this situation is that companies engaged in the business of importing United States made automobiles from Canada will be unable to continue because the duty assessed is greater than the potential profit margin. Many American jobs will be lost. Revenues from income and employment taxes, business taxes, state sales taxes, customs duties on the foreign content of those automobiles, and the resulting economic multiplier will be lost as these companies are forced out of business.

## EXPLANATION OF PROPOSED TECHNICAL CORRECTION

It is proposed that the NAFTA Implementation Act be amended to provide that customs duties and fees on automobiles made in United States FTZ's be assessed on only the value of the foreign content when reentered from a NAFTA participating country. This amendment would provide that automobiles made in United States FTZ's and later entered into the Customs Territory of the United States for consumption would be treated the same whether they were entered directly into the United States or had been exported to Canada first and then entered into the United States. NAFTA provision would be made transparent to the transaction and importers of United States made automobiles which otherwise conform to the NAFTA Rules of Origin would no longer be penalized.

## COMMITTEE OF AMERICAN BUSINESS FOR EQUAL TREATMENT UNDER NAFTA

AUTO ENTERPRISES
850 N. Rochester Road
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(810)589-3600
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CAN AM AUTO IMPORTERS
8535 Transit Road
Williamsville, New York 14221
(716)689-8900
FAX (716)266-2518

CIRCLE T
302 South 700 East
Jerome, Idaho 83338
(208)324-3814
FAX (208)733-4333

DICKSON MOTOR SALES AND LEASING
7723 Buffalo Avenue
Niagara Falls, New York 14304
(716)283-7117

FREEWAY AUTO BROKERS
1801 Iowa Street
Billingham, Washington 98226
(206)380-3309

INTERNATIONAL VEHICLE IMPORTERS
6070 S. Saginaw Street
Grand Blanc, Michigan 48439
(810)603-0311
FAX (810)693-0002

J.K. MOTORS
941 Ridge Road
Webster, New York 14580
(716)671-3161
FAX (716)671-2780

LAUREK INTERNATIONAL TRADE
129 State Street
Clayton, New York 13624
(315)686-4652
FAX (315)686-4652

NAFTA TRADING
10108 Portland Avenue
Tacoma, Washington 98445
(206)537-2038
#1910

PLAZA IMPORTERS
(A.K.A. LARGO RV)
1395 Impay City Road
Lapeer, Michigan 48446
(810)667-6109
FAX (810)667-4540

SUPERIOR AUTO SALES
5201 Camp Road
Hamburg, New York 14075
(716)549-6695
FAX (716)649-2375

THOMPSON-FELT AUTO BROKERS
445 Douglas Avenue, Suite 2205J
Altamonte Springs, Florida 32714
(407)788-9085
FAX (407)880-1702

TK AUTO
13 Brigham Street
Westboro, Massachusetts 01581
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FAX (508)898-2328

US CAR
1234 1/2 W Fairbanks Avenue
Winterpark, Florida 32789
(407)629-7919
FAX (407)629-7919

COMSTOCK & THEAKSTON, INC. SINCE 1894

56 Kinderkamack Rd. • Oradell, N.J. 07649 • FAX (201) 967-8906 • (201) 967-1220 CUSTOMS BROKERS DRAWBACK SPECIALISTS

Date of request: May 25, 1995

**Proposed Technical Amendment**

On April 25, 1995 (Document No. TR-8) Congressman Philip M. Crane (R-IL) announced a request for written comments on technical corrections to recent trade legislation. In response to that request, the following is a proposed technical amendment to section 632, Title VI - Customs Modernization - Public Law 103-182, the North American Free Trade Agreement Implementation Act (107 Stat. 2057), enacted December 8, 1993:

> Title VI, section 632 of this Act amended 19 U.S.C. 1313 by adding a new subsection (s), "Designation Of Merchandise By Successor". 19 U.S.C. 1313(s)(2)(B) uses the word "successor" two times. The first time this word is used is in line 11 on page 73 of Title VI (or the 18th word in 1313(s)(2)(B)). The use of this word in this location is clearly incorrect. A successor cannot exist before the date of succession. What was clearly intended here was the word "predecessor". *Therefore, the term "successor" in line 11 should be corrected to read "predecessor".* (U.S. Customs has also acknowledged that this change needs to be made. They have addressed this error in the Background section of their proposed regulations for 19 CFR Ch.1 Part 191.)

CPS

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Dunkirk, New York
14048-9703

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(716) 366-6010

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: SUPPORTIVE COMMENTS ON THE TECHNICAL CORRECTIONS LEGISLATION PRESENTED BY CONGRESSMAN PHILIP CRANE

The above legislation clarifying the merchandise processing fee as it applies only to the foreign value of merchandise entered from a foreign trade zone is needed and supported.

CPS Corporation is a Foreign Trade Subzone, and we strongly support the above legislation. The technical correction is necessary to resolve the intent of the law. Without passage of the technical correction legislation we are forced into a position of paying a fee on products with value added domestically. To demonstrate how outrageous this is, consider the following: zone users are required to pay merchandise processing fees on the domestic value added in the zone, but the fees are not applied to Canadian goods. This is unconscionable. Due to NAFTA, the MPF has been completely phased out, yet we are charged a fee on materials, labor, overhead and profit associated with our own country.

Passage of this legislation is necessary to level the playing field for American companies and keep us competitive in the marketplace.

Thank you for your time and consideration in this matter.

Sincerely,

Dawn M. Houle

Dawn M. Houle
Foreign Trade Zone Coordinator

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May 24, 1995

Phillip D. Moseley, Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

*Section 1022 of H.R. 3419*
*("Clarification of Applicability of*
*Customs User Fee")*

Dear Mr. Moseley:

This letter is written in support of the enactment of the amendment included in section 1022 of H.R. 3419 which the House passed on May 17, 1994. The Senate adjourned before acting on the bill. The proposed amendment would clarify the application of the so-called customs user (or "merchandise processing") fee and eliminate the unintended assessment of the fee on products of American-origin. This letter is submitted on behalf of Dole Foods Company ("Dole") and Maui Land and Pineapple Company, Inc. ("Maui"). Both Hawaii-based companies have been assessed with customs user fees on the value of pineapples grown in Hawaii and processed ("canned") in the companies' foreign trade subzones located, respectively, in Honolulu and Maui.

The proposed amendment is revenue neutral and non-controversial. Its adoption would correct an obvious anomaly in the Customs Service's interpretation of the existing legislation.

The background to section 1022 is somewhat complicated. In 1987, the Customs Service concluded that it would not assess the customs user fee on the value of the pineapples grown in Hawaii, but would assess the fee on the value of certain foreign-origin tinplate used to can the pineapples in foreign trade subzones located in Hawaii. However, in 1988, the Customs Service decided to assess the fee on both the value of pineapples grown in Hawaii and the value of the foreign-origin tinplate. The 101st Congress enacted the Customs and Trade Act of 1990. One section of that Act (Section 111 (b)(2)(D)(v)) addressed the problem arising from the Customs Service's 1988 ruling.

The 1990 amendment made the fee inapplicable to agricultural products of American-origin processed in American foreign trade zones. Accordingly, the Customs Service promptly directed its officers to assess the fee on both the domestic and foreign value of imports entering from foreign trade zones, except for entries of domestically-grown agricultural products processed and packed in a foreign trade zone. This interpretation resulted in the assessment of the customs user fee on a wide-range of American-origin merchandise processed in American foreign trade zones.

Section 1022 would have remedied the unintended extension of the applicability of the fee, both prospectively and retroactively to November 30, 1986. The House made it clear that Customs had misinterpreted the law from its inception and that the amendment was retroactive even if Customs had liquidated an entry as long as the liquidation had not become final, i.e, as long as the importer had filed a protest.

It is against this background that Dole and Maui urge the enactment of language identical to section 1022.

Respectfully submitted,

Jack Gumpert Wasserman

JGW/kam

cc: The Honorable Neil Abercrombie
The Honorable Patsy Mink

DORSEY & WHITNEY
PROFESSIONAL LIMITED LIABILITY PARTNERSHIP

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ROCHESTER, MN
BILLINGS
GREAT FALLS
MISSOULA
DES MOINES
FARGO

L. Daniel Mullaney
(202) 452-6947

May 26, 1995

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

At the invitation of Congressman Crane, Chairman of the Subcommittee on Trade of the Committee on Ways and Means, we herewith submit one technical correction to the Uruguay Round Agreements Act ("URAA") (P.L. 103-465), which is deficit neutral.

Article 7 of the Uruguay Round Antidumping Agreement1/ authorizes the imposition of provisional measures -- preferably a security in the form of cash deposit or bond -- during the course of an antidumping investigation, to secure the eventual payment of the definitive antidumping duty. Article 10.3 states that if the definitive antidumping duty is higher than the amount estimated for purposes of the security, the difference shall not be collected. This is often called the provisional measures cap. No distinction is made in Article 10.3 between provisional measures in the form of cash deposits and provisional measures in the form of bonds.

Under U.S. law, section 733(d)(1)(B) of the Tariff Act of 1930, as amended, (19 USC 1673b(d)(1)(B)) authorizes provisional antidumping duty measures in the form of "cash deposit, bond, or other security."

Section 737(a) of the Tariff Act of 1930, as amended (19 USC 1673f), implements the provisional measures cap provision of the Antidumping

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1 Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

DORSEY & WHITNEY

Agreement, but inexplicably mentions only "cash deposits" as giving rise to the provisional measures cap. "Bonds" are not mentioned. The antidumping regulations of the Department of Commerce have always provided that "bonds" trigger the provisional measures cap in the same way as cash deposits, and the Court of Appeals for the Federal Circuit recently upheld this long-standing interpretation of the statute. Daewoo Electronics Co., Ltd v. United States, Slip ops. 92-1558, -1559, -1560, -1561, -1562. (Fed. Cir., September 30, 1993).

To clear up a possible source of confusion in the law, the URAA should clarify that the provisional measures cap is triggered by bonds and other securities as well as by cash deposits. To accomplish this, section 219(c)(10) of the URAA, which already amends section 737(a) (19 USC 1673f), should be amended as follows:

> Section 219(a)(10) is amended by inserting before the period " , and by inserting after 'collected' wherever it appears the phrase ' , or bond or other security posted,' ".

Please contact the undersigned if we can offer further clarification.

Sincerely,

John B. Rehm
L. Daniel Mullaney

Gotoh Distribution Service, Inc.

925 West Thorndale Ave. • Itasca, IL 60143-1338
(708) 875-2000 • FAX (708) 875-2005

May 15, 1995

Phillip D. Mosely
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Mosely:

We are writing to you as a result of Congressman Phillip R. Crane's (R-IL) request for written comments from all interested parties concerning technical corrections to recent trade legislation. As an operator of zones, the company strongly supports the legislation in general, and in particular, the clarification that the application of Customs ad valorem merchandise processing fee (Section 111(b)(2)(D)(v) of the Customs and Trade Act, Section 1303(b)(8)(D)) applies only to the foreign value of merchandise entered from a foreign-trade zone.

Our support is as a result of our understanding that it was never the intent to assess such fee on domestic materials, labor, overhead and profit associated with merchandise produced in a foreign-trade zone. However, because this has never been specifically stated, there have been numerous problems and much confusion. For this reason, we feel the technical correction is necessary in order to further the intent of the laws and regulations concerning foreign-trade zones and the payment of merchandise processing fees.

We thank you for your consideration.

Sincerely,

James F. Welton

James F. Welton
Director of Corporate Projects

*Greater Gulfport / Biloxi Foreign Trade Zone, Inc.*

May 26, 1995

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: Supportive Comments on the Technical Correction Legislation presented by Congressman Philip Crane

Dear Mr. Moseley,

The above legislation clarifying the merchandise processing fee as it applies only to the foreign value of merchandise entered from a Foreign Trade Zone is needed and supported by our zone.

The Greater Gulfport/Biloxi Foreign Trade Zone #92 has four subzones including Ingalls Shipbuilding, Trinity Marine, Avondale Shipbuilding and Chevron USA along with a major wood processing firm, Duratex, which are utilizing the zone process in this area.

Our zone strongly supports the above corrective legislation and believes the technical correction is necessary to resolve the intent of the law. Without passage of this technical correction legislation, we are forced into a position of paying merchandise processing fees on products with value added domestically. We do not believe this is fair and strongly support the passage of this legislation in order to allow American companies to fairly compete in the international marketplace.

Thank you for your time and consideration and for allowing us to express our opinion on the passage of this important legislation.

Sincerely,

Louis J. Elias
President
Gulfport/Biloxi Foreign Trade Zone #92
LE:lg

HITACHI

**Hitachi Automotive Products(USA), Inc.**
**955 Warwick Road - P.O. Box 510**
**Harrodsburg, Ky. 40330**
**Phone (606) 734-9451 Fax: (606) 734-5309**

May 23, 1995

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley,

Written comments were requested by Congressman Phillip M. Crane (R-IL) concerning technical corrections to the recent trade legislation. Hitachi Automotive Products (USA), Inc. located in Harrodsburg, Kentucky is a user of foreign- trade zones and strongly supports the proposed trade legislation. Our company produces automotive parts and purchases both foreign and domestic components.

In particular we support the clarification that the application of Customs ad valorem merchandise processing fee (Section 111(b) (2)(D)(v) of the Customs and Trade Act, Section 1303 (b)(8)(D) applies only to the foreign value of merchandise entered from a foreign-trade zone. My company supports this clarification of the Act because it is clear the merchandise processing fee was never intended to be charged on domestic materials, labor, overhead, or profit associated with merchandise produced in a foreign-trade zone. Unfortunatley, because the language of the Act is not specific, considerable confusion and many problems have resulted. In our opinion, the technical correction is necessary in order to further the intent of the laws and regulations concerning foreign-trade zones and the payment of merchandise processing fees.

We ask that you carefully consider my comments in support of this legislation. The technical corrections, especially the clarification concerning Customs ad valorem merchandise processing fee, is important and will correct any previously misinterpreted statutes. Thank you for your consideration.

Best Regards,

Hitachi Automotive Products (USA), Inc.
Production Management Department
Production Control Section

Dean Lee

Dean Lee
Department Manager

Brad Banks

Brad Banks
Section Manager

Tommye B Middleton

Tommye Middleton
FTZ Administrator

Sherry Brock

Sherry Brock
FTZ Compliance Specialist

Mike Dickerson

Mike Dickerson
FTZ Specialist

# INTERAMERICAN JUICE COMPANY INC.

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Telecopier (201) 589-6434

May 25, 1995

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: SUPPORTIVE COMMENTS ON THE TECHNICAL CORRECTIONS LEGISLATION PRESENTED BY CONGRESSMAN PHILIP CRANE

Dear Sir:

The above legislation clarifying the merchandise processing fee ("MPF") as it applies only to the foreign value of merchandise entered from a foreign trade zone is needed and supported.

Interamerican Juice Company is located in a Foreign Trade Zone, and we strongly support the above legislation. The technical correction is necessary to the resolve the intent of the law. Without passage of the technical correction legislation we are forced into a position of paying a fee on products with value added domestically. To demonstrate how outrageous this is, consider the following: zone users are required to pay merchandise processing fees on the domestic value added in the zone, but the fees are not applied to Canadian goods. This is unconscionable. Due to NAFTA, the MPF has been completely phased out, yet we are charged a fee on materials, labor, overhead and profit associated with our own country.

Passage of this legislation is necessary to level the playing filed for American companies and keep us competitive in the market.

Thank you for your time and consideration in this matter.

Sincerely,

Maarten Heymeyer
General Manager

**KOCH**

**KOCH REFINING COMPANY**

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: SUPPORTIVE COMMENTS ON THE TECHNICAL CORRECTIONS LEGISLATION PRESENTED BY CONGRESSMAN PHILIP CRANE

The above legislation clarifying the merchandise processing fee as it applies only to the foreign value of merchandise entered from a foreign trade zone is needed and supported.

Koch Refining Company is a Foreign Trade Subzone, and we strongly support the above legislation. The technical correction is necessary to resolve the intent of the law. Without passage of the technical correction legislation we are forced into a position of paying a fee on products with value added domestically. To demonstrate how outrageous this is, consider the following: zone users are required to pay merchandise processing fees on the domestic value added in the zone, but the fees are not applied to Canadian goods. This is unconscionable. Due to NAFTA, the MPF has been completely phased out, yet we are charged a fee on materials, labor, overhead and profit associated with our own country.

Passage of this legislation is necessary to level the playing field for American companies and keep us competitive in the marketplace.

Thank you for your time and consideration in this matter.

Sincerely,

Connie G. Resendez

Connie G. Resendez
Foreign Trade Zone Administrator

Lamb & Lerch
Counsellors at Law

233 Broadway
New York, N.Y. 10279

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May 25, 1995

SENT BY FEDERAL EXPRESS
Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Committee on Ways and Means Request for Written Comments on Technical Corrections to Recent Trade Legislation (Advisory No. TR-8, dated April 25, 1995)

Dear Mr. Moseley:

The Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, requested written comments for the record from all parties interested in technical corrections to recent trade legislation. This letter is written by Lamb & Lerch, a New York-based law firm engaged exclusively in the area of customs and international trade law, including foreign-trade zone matters, to express our strong support with regard to the following proposed technical amendment to the Customs and Trade Act of 1990:

> Clarify the application of customs user fees (section 111(b)(2)(D)(v) of the Customs and Trade Act, section 13031(b)(8)(D) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and 19 U.S.C. 58c(b)(8)(D)) that the ad valorem merchandise processing fee applies only to the foreign value of merchandise entered from a foreign trade zone.

We support the above-referenced amendment and believe said amendment accurately reflects the intended application of the ad valorem merchandise processing fee (MPF) -- which was to assess the MPF solely on the value of any "foreign status" merchandise contained in an article entered into the customs territory of the United States from a United States foreign trade zone (FTZ).

Subjecting "domestic status" merchandise processed within a FTZ to the assessment of the MPF runs contrary to the intent of Congress as well as defies common sense. As originally enacted, 19 U.S.C. 58c(b)(8)(D) exempted from the assessment of the MPF the entire value of articles provided for in Schedule 8, Tariff Schedules of the United States. Congress ultimately narrowed this exemption with regard to merchandise classified under subheading 9802.00.80, HTSUS (the so-called American Goods Assembled Abroad provision), by limiting the exemption from the assessment of the MPF to the value of the United States fabricated components contained in the imported article and subjecting only the value of the foreign merchandise contained in the article to the assessment of the MPF. This is a clear indication of Congress' intent that the MPF not be assessed on the value of any articles other than of foreign origin. The assessment of the MPF on the value of "domestic status" merchandise contained in articles entered from a FTZ therefore runs contrary to this specific language.

> For example, if a U.S. fabricated air conditioner is installed in a foreign-produced motor vehicle while said vehicle is still within the foreign country of production, the value of the U.S fabricated air conditioner would not be subject to the assessment of the MPF when the vehicle was entered into the customs territory of the United States. However, if the U.S. fabricated ("domestic status") air conditioner were to be installed in the same foreign-produced vehicle after the vehicle has been admitted into a FTZ, the value of the "domestic status" air conditioner would (if "domestic status" merchandise were to be made subject to the assessment of the MPF) be subject to the assessment of the MPF when said vehicle was entered into the customs territory of the United States. This would result in an incentive to install the U.S. fabricated air conditioner, as well as all U.S. fabricated components, abroad utilizing foreign labor instead of installing the U.S. fabricated components using U.S. labor in a FTZ -- certainly not a result intended nor desired by Congress.

A second result of assessing the MPF on the value of "domestic status" merchandise could be the potential of a double assessment of the MPF on imported merchandise.

> For example, imported merchandise (foreign-produced air conditioner) clears U.S. Customs and customs duties and MPF are paid. The air conditioner is then subsequently

admitted into a FTZ in "domestic status" and is utilized in the production of a finished article (motor vehicle). When the motor vehicle is removed from the FTZ and entered into the Customs territory of the United States, the value of the duty/MPF paid imported air conditioner would (if "domestic status" merchandise were to be made subject to the imposition of the MPF) be subject to its second assessment of the MPF -- certainly not a result intended nor desired by Congress.

Based upon the foregoing, we believe that the technical corrections legislation clarifying that the ad valorem MPF applies only to the value of the "foreign status" merchandise contained in articles entered into the Customs territory of the United States from a FTZ is extremely significant and does in fact effectuate the original intent of Congress. We therefore strongly urge the inclusion of this technical amendment to the 1995 Technical Corrections Act.

Respectfully submitted,

Lamb & Lerch

BY: ______________________
David R. Ostheimer

LLGMA

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LUGGAGE & LEATHER GOODS
the finishing touch

May 26, 1995

Honorable Phillip Crane
Chairman
Subcommittee on Trade
Committee on Ways and Means
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Chairman Crane:

RE: Trade Advisory No. TR-8
Technical Corrections

The Subcommittee recently issued a Trade Advisory (No. TR-8), requesting written comments on technical corrections to recent trade legislation, including amendments to HR 5110, the Uruguay Round Agreements Act (P.L. 103-465), which were considered by the Committee but were not included in the final version of the bill. The Luggage and Leather Goods Manufacturers of America, Inc. (LLGMA) was disappointed that the flat goods provision sponsored by Congressman Sensenbrenner that was adopted by the Committee last year as part of HR 5110, but later dropped in the implementing legislation, was not included among the technical amendments in the Subcommittee's Advisory. LLGMA believes the Committee-adopted provision on plastic flat goods should be among those considered and passed by the Committee at the earliest possible opportunity for the following reasons:

1. Both the Ways and Means Committee and the Administration supported the plastic flat goods provision as necessary to "rectify [an] error." The Committee described the problem in the following way:

> *"After adoption of the Harmonized Tariff Schedule, a Customs Service ruling had the effect of reducing the duty on articles such as wallets, purses, key cases and the like. The change, <u>not intended by Congress</u> [emphasis added], resulted from not carrying over the former tariff system's definition of "reinforced and laminated plastics." This provoked a flood of imports from low-wage countries and harmed U.S. producers of competing products. The amendment would rectify this error by reinstating the definition that previously was in effect... . These modifications would restore the situation that was in effect before the adoption of the Harmonized Tariff System."*

2. Through outside Counsel, LLGMA has obtained important new evidence showing that failure to carry over the former tariff

system's definition of "reinforced or laminated plastics" was a mistake -- a mistake which opened the door to a huge tariff loophole that will cost the U.S. Government between 75-100 million dollars over the next ten years and thousands of jobs in the domestic flat goods industry. The mistake clearly lends itself to a technical correction.

A recap of the history of the conversion of the two plastic flat goods categories from the TSUS to the HTS that describes how this oversight occurred is provided below:

-- The TSUS had two breakouts for plastic flat goods: (1) flat goods of "reinforced or laminated plastics," TSUS 706.42, dutiable at 5.5 cents/lb. + 4.6%, and (2) other plastic flat goods, TSUS 706.61, dutiable at 20%. The overwhelming vast majority of plastic flat goods entered in the "other" category under the TSUS.

-- The September 1984 draft of the conversion to the HTS shows one category for plastic flat goods, with a duty rate of 20 percent. It eliminated the much lower duty TSUS breakout for flat goods of "reinforced or laminated plastics," reflecting the fact that there was very little trade in this category, which was considered a specialty item. In addition, the International Trade Commission's June 1983 cross reference between the HTS and TSUS shows that the TSUS provision for flat goods of "reinforced or laminated plastics" was intended to be subsumed in a new HTS provision covering all plastic flat goods at a 20% duty rate.

-- The October 1986 draft of the conversion to the HTS shows that the "reinforced or laminated plastics" flat goods category is reinserted. The intent, according to the ITC's January 1988 cross reference, is to match up the old TSUS provision for flat goods of "reinforced or laminated plastics" with the new HTS breakout of the same description.

-- The mystery of why the "reinforced or laminated plastics" flat goods category was reinserted into the October 1986 draft HS conversion, after having been removed from the earlier version, was recently solved. It was reinserted at the request of the Israeli Government because Israel argued that it would lose a trade concession on the "reinforced/laminated" category because (1) the US-Israel FTA had been negotiated based on the TSUS, and (2) Israel had immediate duty-free treatment on the "reinforced/laminated" category, but a five year phased duty reduction on the "other" category, into which the "reinforced/laminated" category had been merged.

The attached letter and materials from the Office of the United States Trade Representative in response to a Freedom of Information Act request clearly demonstrate that the US Government bifurcated the merged category as a result of Israel's request. However, the definition of "reinforced or laminated plastics," which had appeared in a different part of the TSUS and which had been used to define these goods as specialty items (i.e., made of rigid plastics), was overlooked and failed to be reinserted by the drafters. The mistake opened the door to an erroneous interpretation of what constitutes flat goods of "reinforced or laminated plastics" under the HTS, resulting in the migration of millions of dollars of trade to the lower duty category between 1990 and 1994. In 1990, prior to the reclassification, the value of trade in the "reinforced/laminated" category was $1.5 million. By 1994, this number had grown to $78.6 million, the direct result of the erroneous reclassification.

It is the domestic industry's view that Congress should not entertain for a minute the notion that rectifying what has been identified and acknowledged as an unfortunate and costly oversight is in any way controversial. The current tariff schedule reflects a drafting error, not Congressional intent. LLGMA believes that the nature of this error lends itself to a technical correction, which is long overdue and should be enacted at once.

Sincerely,

Robert K. Ermatinger

Robert K. Ermatinger
Executive Vice President

Enclosure

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE
WASHINGTON, D.C. 20506

April 4, 1995

Mr. Paul G. Giguere
Sandler, Travis & Rosenberg, P.A.
1341 G Street, N.W.
Washington, D.C. 20005-3105

Dear Mr. Giguere:

This is in response to your request for "records pertaining to modifications made to the draft Harmonized Tariff Schedule of the United States (HTS) as published in October 1986", under the Freedom of Information Act. Your request was dated February 20, 1995, and received in the General Counsel's office on February 22, 1995.

On February 23, 1995, we informed you that because of our need to coordinate with, and search files in more than one office, we would not be able to provide a response within ten working days. (5 U.S.C.A. §552(a) (6)(B) (i) (ii) (iii)).

After an extensive search of our files, we were able to locate only part of one document which would be responsive to your request, and we are releasing it to you. It is part of Annex VII of the March 1986 TPSC paper, which you cited in your request, summarizing the results of an interagency effort on the HTS conversion. We suggest that you contact the Department of Commerce and the International Trade Commission for further information, if you have not already done so.

There is no charge for processing your request.

In the event that you are unsatisfied with USTR's action on your request, you may appeal it within thirty (30) days, in writing to:

FOIA Appeals Committee
600 17th Street, NW
Washington, D.C.

Both the envelope and the letter should be clearly marked "Freedom of Information Act Appeal."

Should you have any questions, please feel free to contact me at (202) 395-3432.

Sincerely,

Sybia Harrison
Sybia Harrison
FOIA Officer

Enclosures

(e) Israeli Free Trade Area -- The preferential rates of duty for products of Israel will also be reflected in the TSUS in the new "Special" column. All products are included in the free trade area; however, products will stage down to free at different times. It is anticipated that the designation "I" along with the preferential rate of duty will be used to indicate the rate applicable to products of Israel. This is somewhat different from the treatment described in the previous four cases, since this is the only case where a rate of duty would be required in addition to the alpha designation.

For the most part, the conversion of the Israeli Preference rates is a technical exercise which can be performed through examination of a concordance between the items which will be covered under the TSUS and the items to which they have been allocated in the Harmonized System based tariff schedule. However, in some cases, products with different staging patterns are combined under one tariff line in the Harmonized System.

In February 1986, the TPSC Subcommittee on Israel, with advice from the Task Force, reviewed the conversion and identified the most sensitive areas in which breakouts would be needed to continue treatment agreed to under the FTA. These breakouts are listed in Annex VII as part of the general update of the conversion. The textiles chapters were not examined in detail because the 1984/85 changes in the TSUS made to accommodate the free trade area with Israel are not yet reflected in the Harmonized System documentation available to the group.

The next step will be to negotiate with Israel on the remaining less sensitive items where proposed treatment in the conversion does not align exactly with the staging patterns agreed to in the FTA. The process may result in additional breakouts or in marginal changes in the staging patterns for some items.

VII-24

4202.32.10:
Delete and substitute the following:

| | | | |
|---|---|---|---|
| | With outer surface of plastic sheeting: | | |
| 4202.32.10 | Of reinforced or laminated plastics...................... | 12¢/kg + 4.6% | $1.10/kg + 60% |
| 4202.32.20 | Other...................... | 20% | 45% |

Remarks: FTA - Israel.

Luggage and Leather Goods
Manufacturers of America, Inc.
350 Fifth Avenue • Suite 2624
New York, New York 10118-0058
212/695-2340
FAX: 212/643-8021

LUGGAGE & LEATHER GOODS
the
finishing touch

**WRITTEN SUBMISSION OF**

**THE LUGGAGE AND LEATHER GOODS MANUFACTURERS OF AMERICA, INC.**

**ON TECHNICAL CORRECTIONS TO RECENT TRADE AND TAX LEGISLATION**

**MAY 26, 1995**

I. Introduction and Statement of Position

The House Ways and Means Trade Subcommittee has asked for public comments on certain technical amendments, including an amendment to the Caribbean Basin Economic Recovery Act ("CBI") and Andean Trade Preference Act (ATPA) to clarify that duty reductions on certain handbags, luggage, flat goods, work gloves, and leather wearing apparel do not apply to textile articles which are subject to textile agreements. This correction was first approved by Congress as section 6205 of HR 11, tax legislation, which was subsequently vetoed. Thus, it has already been endorsed by both houses of Congress.

The Luggage and Leather Goods Manufacturers of America, Inc. (LLGMA) supports enactment of this technical amendment. The LLGMA represents a substantial majority of domestic producers of luggage and flat goods.

II. Background

A number of textile products, including textile luggage and flat goods which are subject to textile agreements[1], are receiving CBI and ATPA duty benefits, contrary to the intent of Congress. The LLGMA was first alerted to this problem with the issuance of Presidential Proclamation 6482, dated May 1, 1992 (Federal Register of May 6, 1992), which implements the duty reductions on imports of leather-related products, including certain handbags, luggage, flat goods, work gloves, and leather wearing apparel from Caribbean countries, pursuant to the changes made by the Caribbean Basin Economic Recovery Expansion Act of 1990 (P.L. 101-382). The Proclamation erroneously imposed duty reductions on textile articles subject to textile agreements, which violates the specific intent of Congress as specified in the conference report (101-650).[2] The conference report language (at Attachment 1) states:

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[1] The textile products include work gloves, handbags, luggage and flat goods. All these products are "subject to textile agreements." As an example, textile restraints are currently in place on textile luggage from Taiwan, Korea, China, Thailand, the Philippines and Sri Lanka.

[2] The problem was compounded with the issuance of Proclamation 6455, dated July 2, 1992, (Federal Register of July 7, 1992), which implemented the Andean Trade Preference Act (ATPA) duty benefits. Since Congress intended that ATPA beneficiary countries receive the same CBI duty benefits as enacted in section 212 of the "Expansion" Act, the Executive Branch repeated the error by placing these same textile products on the ATPA Proclamation list.

> The duty reductions apply to all handbags, luggage, flat goods, work gloves, and leather wearing apparel...except that <u>any such articles that are also textile or apparel articles which are subject to textile agreements will continue to be exempt from the CBI program and subject to present rates of duty.</u> (Emphasis added.)

On the basis of the report language cited above, LLGMA asked the Executive Branch to remove these textile products from the Proclamation list. Subsequently, the Bush Administration stated that it shared the view that it was not the intention of Congress to provide any duty preferences on these textile products. Accordingly, it relayed its support to the industry and Congress for a resolution of this situation. However, the Executive Branch also held the view that a technical amendment was necessary because the legislative language, itself, was somewhat ambiguous on this point.

III. <u>Reasons Why Technical Correction Should be Enacted</u>

The technical correction is necessary for the following reasons:

1. The intent of the framers of the Caribbean Basin Economic Recovery Expansion Act of 1990 was <u>not</u> to provide duty preferences on textile products subject to textile agreements.

2. Congress and the Executive Branch agreed that this situation should be remedied with a technical amendment, which passed the Congress in 1992 as part of a tax bill, but was subsequently vetoed.

3. Without the passage of the technical amendment, implementation of CBI parity legislation could result in problems in the duty treatment of textile luggage (and the other textile products erroneously granted duty benefits) under the CBI and ATPA. A prime example of where this is likely to occur is with regard to the current NAFTA duty benefit provided to textile products made from US formed and cut fabrics. Under NAFTA, such textile products are provided duty-free treatment in the US market and this benefit will also be extended to CBI eligible countries if CBI Parity is enacted. A major complication arises in the case of products, which are textile products, but are being treated as non-textile products for CBI duty purposes. For example, how will textile luggage be treated for purposes of CBI parity -- as a "textile product" or as "luggage"? If textile luggage is treated for duty purposes as "luggage"[3] as opposed to "a textile product," then it could be argued that textile luggage made in CBI eligible countries from US formed and cut fabrics should be denied the duty treatment (i.e., immediate duty-free treatment) available to <u>textile products</u> made from US fabrics. This, of course, is inconsistent with the NAFTA treatment afforded this product.

IV. <u>Conclusion</u>

In conclusion, LLGMA believes that this technical correction, which would be revenue positive, should be made at once. Furthermore, LLGMA recommends that such technical correction be incorporated in the CBI Parity legislation now making its way through the Ways and Means Committee.

---

[3] Under NAFTA, US duties on luggage of all types are phased out over a ten-year period.

**Statement of Douglas R. Schenk**
**President**
**Maui Pineapple Company, Ltd.**
**Kahului, Hawaii**
**Before the Subcommittee on Trade**
**Committee on Ways and Means**
**U.S. House of Representatives**

**May 26, 1995**

As President of Maui Pineapple Company, Ltd., I am submitting written comments in support of a trade technical correction to the Customs and Trade Act of 1990. This statement is submitted by Maui Pineapple Company in response to a request by the Trade Subcommittee for written comments on technical corrections to recent trade legislation.

Maui Pineapple Company is submitting written comments in support of the proposed technical amendment to the Customs and Trade Act of 1990 which would clarify that the ad valorem merchandise processing fee under the customs user fees applies only to the foreign value of merchandise entered from a foreign trade zone.

Section 111(b) of the Trade Act of 1990 provides that, in the case of agricultural product of the United States processed and packed in foreign trade zones, the ad valorem merchandise processing fee (MFP) shall be applied solely to the value of the foreign material used to make the container. This section of the Act exempts the value of the domestic agricultural products from the MFP.

Contrary to congressional intent, the U.S. Customs Service ruled that for all products not covered by the provision and in the absence of an express provision to the contrary, the MFP would be assessed on both the domestic and foreign value of merchandise entering from foreign trade zones.

Since the enactment of the Customs and Trade Act of 1990 Maui Pineapple Company has sought to clarify that the merchandise processing fee (MFP) under the customs user fee provision shall apply solely to the foreign value of the merchandise entered from a foreign trade zone. In addition, the technical correction should provide that the provision made by section 111(b)(2)(D)(iv) of the Trade Act of 1990 regarding the application the MFP to processed agricultural products should also apply to all entries for which liquidation has not been finalized from foreign trade zones beginning December 1, 1986.

This technical correction was passed by the House of Representatives in the 103rd Congress as part of Tax Simplification and Technical Corrections Act of 1993 ( H.R. 3419). This provision is consistent with congressional intent, has the approval of the U.S. Customs Service and has been scored as revenue neutral by the Congressional Budget Office. We respectfully urge that the Subcommittee on Trade of the House Committee on Ways and Means to approve this provision as part of its omnibus trade technical corrections measure.

# NATIONAL ASSOCIATION OF FOREIGN-TRADE ZONES

May 26, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Committee on Ways and Means Request for Written Comments on Technical Corrections to Trade Legislation (Advisory No. TR-8, April 25, 1995)

Dear Mr. Moseley:

The Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, requested written comments for the record from all parties interested in technical corrections to recent trade legislation. This letter is written to express our strong support for one of the proposed technical amendments to the Customs and Trade Act of 1990 and to offer suggested language for the amendment. The technical amendment which we support, as summarized in the Subcommittee on Trade's Advisory, is as follows:

> Clarify the application of customs user fees (section 111(b)(2)(D)(v) of the Customs and Trade Act, section 13031(b)(8)(D) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and 19 U.S.C. 58c(b)(8)(D)) that the ad valorem merchandise processing fee applies only to the foreign value of merchandise entered from a foreign trade zone.

The National Association of Foreign-Trade Zones ("NAFTZ") is a non-profit, trade association for individuals, public entities, and companies involved in the U.S. Foreign-Trade Zone Program. Its purpose is to promote, stimulate and improve foreign-trade zones and their use; to encourage the establishment of foreign-trade zones; to promote zones as tools for the economic development of communities and for assisting companies to become competitive in world markets; and to improve communication and understanding between the U.S. government's regulatory and legislative bodies and foreign-trade zone grantees, operators and users. The current membership totals 440 public entities, companies and individuals.

The U.S. Foreign-Trade Zone Program was created by special legislation of the U.S. Congress in order to stimulate international trade and create jobs and investment in the U.S., rather than abroad. Companies may bring foreign and domestic merchandise into zones for a variety of purposes, including storage, testing, relabeling, displaying, and manufacturing and for the eventual purpose of entry into U.S. commerce or for exportation from the U.S. All Customs duties and federal excise taxes are deferred while merchandise is in a zone.

The general provision of the user fee statute, 19 U.S.C. § 58c(a)(9), states that the merchandise processing fee shall be assessed on any merchandise formally entered or released into the United States, except as exempted or restricted by the statute. In addition, 19 U.S.C. § 58c(b)(8)(D)(ii), requires Customs to assess the merchandise processing fee on the value of the merchandise as determined under section 402 of the Tariff Act of 1930 (19 U.S.C. § 1401a). In the case of foreign trade zones, where domestic status merchandise is combined or mixed with merchandise of another zone status, a formal entry is required to transfer the goods into the U.S. Customs territory. When this formal entry is filed, it triggers the liability of the importer to pay applicable U.S. Customs duties and fees.

With regard to merchandise entered from a foreign-trade zone, the value of such merchandise under 19 U.S.C. § 1401a for duty and tax purposes is affected by the Foreign-Trade Zones Act, which expressly provides that "duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article." 19 U.S.C. § 81c. This statutory proviso does not include Customs user fees, since these fees did not exist as the time of enactment of 19 U.S.C. § 81c. As a result, while duties and taxes are assessed only on the foreign value of merchandise entered into the U.S. Customs territory from foreign-trade zones, the U.S. Customs Service has taken the position that the merchandise processing fee is assessed on total domestic and foreign value of entered merchandise. This has the consequence that the merchandise processing fee is being charged on U.S. domestic materials, labor, overhead and profit. Such a consequence was not contemplated or intended when the merchandise processing fee legislation was implemented and is contrary to the intended incentive of the Foreign-Trade Zones Act.

There is a long history concerning this situation and of the administrative and legislative efforts to correct the anomaly. It is important to understand that there is a good deal of necessary background information and history on this subject.

1. When the merchandise processing fee was initiated by Congress, uniformly throughout the United States, the fee was assessed on the dutiable value of merchandise transferred from a foreign-trade zone. The dutiable value of such merchandise, because of a change initiated at the Treasury Department in 1980 amending Section 146.48(e) of the Customs Regulations, is the sum of

the value of the foreign non-duty paid materials in merchandise produced in a foreign-trade zone. A copy of the Treasury Department explanation and T.D. 80-87 (Feb. 4, 1980) are enclosed for your reference. (Exhibit A)

2. In 1987, the District Director of Customs in Honolulu, Hawaii forwarded Memorandum ENT-1-HO:C:D WO, dated June 18, 1987, (Exhibit B) to the Director of the User Fee Task Force concerning the unusual situation of two foreign-trade zone users in the pineapple canning business that imported tin plate and utilized domestic pineapple. Because of the very unusual nature of the cans produced in the foreign-trade zone, Customs Headquarters had ruled that the merchandise withdrawn from the zone was not considered "imported merchandise" and therefore was free of duty. Ruling 073879, dated February 29, 1984. (Exhibit C)

3. On July 14, 1987, Customs Headquarters Ruling 543979, signed by Mr. John T. Roth, Acting Director, Classification and Value Division, responded to the Hawaii Memorandum holding that the merchandise produced in the foreign-trade zone was not subject to the merchandise processing fee. (Exhibit D)

4. Apparently, through some mix-up, certain officials at the Hawaii Customs District did not realize Ruling 543979 was issued and asked the same question on this matter a second time of another office at U.S. Customs Service Headquarters. U.S. Customs Service Memorandum ENT-01-01-CO:R:C:E, Ruling 220707, dated October 3, 1988, signed by Mr. John Durant, held that the merchandise processing fee is applicable to the value of not only the foreign merchandise making up the cans, but the U.S. pineapple merchandise in the cans and domestic labor, overhead, and profit. The Ruling did not reference, distinguish, or reverse Ruling 543979. (Exhibit E)

5. A further Memorandum was forwarded to Customs Headquarters by the District Director in Honolulu, Memorandum CLA-1-HO:I:M CWG, dated November 20, 1989. (Exhibit F)

6. Strenuous efforts were made at U.S. Customs Headquarters to resolve the problem of two Rulings being issued on the same matter that did not reference, distinguish, or reverse one another. While a significant amount of time was spent trying to resolve the issue, the late Senator Matsanaga of Hawaii deemed it more appropriate and less time consuming to submit a technical amendment to the 1990 Trade Law to resolve the issue. A portion

of the report of H.R. 1594 containing the necessary language to reverse the second Customs Headquarters Ruling is enclosed. (Exhibit G)

7. While the NAFTZ was well aware that this matter was going on in Hawaii, no U.S. Customs Service Headquarters official ever indicated that this would be universally applicable or attempted to make this matter universally applicable. No U.S. Customs Service document was forwarded to Customs field offices. During all of this period of time, the merchandise processing fee was continued to be assessed only on the value of foreign non-duty paid materials transferred from a foreign-trade zone into the U.S. Customs Service territory.

8. On October 5, 1990, without any prior notification whatsoever, at the National Association of Foreign-Trade Zones Annual Convention, we received Memorandum MAN-1-IC:UF HDC, dated October 5, 1990. (Exhibit H) Question 8 was a complete and total surprise. Mr. Peter Baish happened to be at the NAFTZ convention, and a meeting was held on the subject. Subsequently, a letter dated October 12, 1990 was forwarded to Mr. Baish. (Exhibit I)

9. On November 6, 1990, Mr. Charles Winwood, Assistant Commissioner of Customs, sent a letter to the then President of the NAFTZ. (Exhibit J) Mr. Winwood's letter states that the change in the Customs position is a result of the Customs and Trade Act of 1990, and we have been told that Customs believes that Congress intended such a modification. We have been in contact with the relevant Congressional Committees and have confirmed that there was no such Congressional intention and there is no Congressional support for the Customs position.

10 The President of the NAFTZ sent another letter to the U.S. Customs Service on December 3, 1990. By letter dated January 11, 1991, Mr. Charles Winwood, Assistant Commissioner of the U.S. Customs Service sent a response letter which concluded that there is no administrative remedy for this matter, and that the only possibility is a legislative remedy. (Exhibit K) It also specifically states that it is Customs' understanding that there is the possibility of a legislative initiative to amend the current law and that, if such legislation is introduced, Customs would be willing to consider methods to minimize the financial impact on affected foreign-trade zones until enactment.

11. Reconsideration of 220707 (dated October 3, 1988) was requested by counsel for Dole Packaged Foods Company in a letter dated February 27, 1989. On October 15, 1991, Mr. Harvey Fox, Director of Customs' Office of Regulations and Rulings, sent a response letter. (Exhibit L) In this letter, Customs denied the request for reconsideration and held that no exemption is provided for domestic merchandise used in articles manufactured in foreign-trade zones containing both domestic and foreign merchandise. It states that such an article entered from a foreign-trade zone is subject to the merchandise processing fee, based upon the appraised value of both the domestic and foreign merchandise.

12. In a letter to the Chief of Customs' Entry Compliance Branch, dated June 25, 1991, the General Counsel for the NAFTZ requested that the New York Regional Commissioner rescind his Informational Pipeline No. 2150, dated June 13, 1991, which states that the full merchandise processing fee is to be collected on all foreign-trade zone entries. This request was denied in a letter dated September 12, 1991 from Samuel Banks, Assistant Commissioner of Customs. (Exhibit M) This letter states that, until additional legislation is passed, Customs must assume that Congress intended that its 1988 Ruling No. 220707 stand with regard to all other merchandise and that Customs was issuing service-wide instructions that liquidations be extended on all foreign-trade zone entries for merchandise containing U.S. components until the pertinent pending legislation has become law or the final adjournment of the 102 Congress on or about December 31, 1992. However, Mr. Banks' letter also advised that Customs will not suspend its decision to collect the merchandise processing fee on the full value of all foreign-trade zone entries regardless of the outcome of the legislation pending at the time. On the same day that Mr. Banks' letter was dated, September 12, 1991, an Automated Broker Interface message from his office was transmitted to instruct all Customs agents to immediately begin collecting the full merchandise processing fee on all entries from foreign-trade zones, even though legislation pending at the time would have exempted foreign-trade zone-added domestic content and value from the merchandise processing fee.

13. Implementation of this new merchandise processing fee for large scale zone operations is time consuming and an expensive burden. Current foreign-trade zone computerized management systems do not have the ability to calculate "dutiable value" for Customs duty purposes and the so-called "total zone value" for merchandise processing fee purposes only. Further, because of a Congressional change in 1994 in the fee calculation placing a maximum of

$485 per entry, most large scale zone operations have such a high dollar amount of "dutiable value" that the "total zone value" calculation has no financial impact.

14. It is clear from the statute and its legislative history that Congress never intended the merchandise processing fee to be assessed on domestic merchandise. The statute assesses a fee "... in an amount equal to 0.17 percent ad valorem." 19 U.S.C. 58c(a)(9). The term "ad valorem" is not defined in the statute, but the legislative history makes clear that the term applies to the "appraised Customs value" of imported merchandise. Except for the change in the calculation of the fee from 0.22 percent to 0.17 percent, the relevant language of the statute is the same as originally enacted by Section 8101 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509, 100 Stat.1985). With respect to Section 8101, the Conference Report on the Omnibus Budget Reconciliation Act of 1986 provides as follows:

> The conferees agreed to an amended version of the House provision imposing a user fee of 0.22 percent ad valorem in fiscal year 1987 and 0.17 percent ad valorem in fiscal years 1988 and 1989 on all formal entries of <u>imported merchandise</u> for consumption, beginning December 1, 1986, based on the <u>appraised Customs value of such merchandise</u>.

House Conference Report No. 99-1012 (October 17, 1986), p. 388. (Emphasis added) As the language makes clear, the fee is to apply <u>only</u> to imported merchandise. Moreover, it is to apply to the "appraised Customs value" of the imported merchandise. The legislative history indicates that this term refers to the dutiable value, i.e., the value that Customs determines as a result of the appraisement process, during which it considers the value claimed on Form 7501 (the "entered value"). The Conference Report further provides:

> The conferees are also concerned that the creation of a user fee on consumption entries not be the occasion for an increase in the recordkeeping or other data collection burdens imposed upon the public. In this regard, it is anticipated that the Customs Service will continue to employ its existing standard consumption entry form (CF 7501) <u>which contains sufficient information to assure proper collection of the user fee</u>. <u>Id</u>. at 389. (Emphasis added)

Had Congress intended the fee to apply to any value other than dutiable value, such as the value of domestic merchandise and U.S. labor, overhead, and profit incurred, it would have so provided.

In establishing the merchandise processing fee, Congress made no special provision for merchandise entered from foreign-trade zones. It gave no indication that Customs was to apply the fee to any value other than dutiable value in the case of merchandise entered for consumption from a zone. Accordingly, Customs has no authority to calculate the fee based on both the domestic and imported content of the merchandise produced in the zone. To do so is to apply the fee not to the dutiable value, but instead to some other value. Customs, in a public document providing questions and answers on the Customs and Trade Act of 1990, announced that it will apply the fee to the "total zone value" as defined by the Customs Regulations. Total zone value, however, is a concept created by Section 146.65(b)(1) of the Customs Regulations for purposes unrelated to the merchandise processing fee. The dutiable value of merchandise entered from a zone is a concept distinct from total zone value, and it is defined in another provision of the Regulations, Section 146(b)(2).

For the four years prior to its recent change in position, the Customs Service consistently has adhered to the intent of Congress to maintain the exemption from the merchandise processing fee for U.S. content. Consistent with this intent, Congress had, until the change in position, consistently applied the fee to the dutiable value of merchandise entered for consumption from a zone. In fact, since the issuance of Customs Directive 3210-22 (August 17, 1987), many zone users have not been required to show "total zone value" on the entry documents. However, the change to new procedures that can show total zone value on entry documents will require some zone users to change their reporting systems and thus incur administrative costs. This change in position by Customs directly contravenes the intent of the Congress:

> In implementing the new user fee, the conferees direct the Commissioner of Customs to make certain that no new recordkeeping or data collection burdens are imposed on the public, including all shippers, cargo-freight carriers, or related entities.

Conference Report, p. 389. (Emphasis added) Therefore, the change in position by the Customs Service not only contravenes the expressed intent of the Congress with regard to the calculation of the fee, but also with regard to the imposition of additional administrative costs.

Another indication that Congress never intended the merchandise processing fee to apply to domestic merchandise is the treatment of imported articles of United States origin. As originally enacted, the statute exempted from the fee the entire value of articles provided for in Schedule 8, TSUS. This exemption therefore applied, inter alia, to articles exported and returned, including articles of U.S. origin processed abroad (items 806.20 and 806.30) and articles assembled abroad in whole or in part from U.S. components (item 807). The exemption demonstrated Congressional intent that the fee was to apply only to articles of foreign origin.

Congress made a number of changes to the various Customs user fees in the Omnibus Budget Reconciliation Act of 1987. Section 9501(a)(1) of that Act narrowed the exemption from the merchandise processing fee for articles provided for it items 806.30 and 807 by applying the fee only to the foreign content of such articles. Once again, Congress demonstrated its clear intent that articles of U.S. origin and U.S. content be exempt from the fee.

In the Customs and Trade Act of 1990, Congress amended 19 U.S.C. Section 58(c) to establish, inter alia, a new fee structure for the merchandise processing fee that was intended to bring the fee into conformance with the General Agreement on Tariffs and Trade (GATT). As noted above, no change was made to the language in the statute pertinent to the valuation of articles for purposes of application of the fee. The 1990 amendment provides no basis to conclude that Congress intended to make any change in its established principle that the merchandise processing fee does not apply to U.S. content.

The amendment in the Customs and Trade Act of 1990 addressing U.S. agriculture products processed in a foreign-trade zone is unrelated to the changes made to conform the fee to the GATT. Instead, its purpose was to correct a particular practice of the Customs Service. The Conference Report for this legislation states as follows:

> As a result of a 1988 Customs Ruling, the practice of the Customs Service is to assess the merchandise processing fee against the entire value of articles packed in non-reusable containers, whether of foreign or domestic origin, which are

> formally entered into U.S. Customs territory from a foreign-trade zone.

As this language demonstrates, a particular and narrow issue was addressed by the amendment. There was no intent by the Congress to address in general the issue of the application of the fee to domestic content.

The House Bill for this legislation has no parallel provision and, in Conference, the House receded to the Senate provision. The Senate Report describes that provision as follows:

> The second addition to the merchandise processing fee legislation corrects a problem arising from the application of fees by the Customs Service to entries of canned pineapple (consisting of non-dutiable foreign-origin cans and U.S.-origin pineapple) entering from a foreign-trade zone. For agricultural products of the United States that are processed and packed in a foreign-trade zone, this section applies the fee solely to the value of material used to make the container for the merchandise, if it is subject to entry and the container is of a kind normally used for packing such merchandise.

The language of the amendment itself, as well as the legislative history, confirms that the amendment was intended to serve as a limitation on, and not an expansion of, the existing scope of the merchandise processing fee. The language of the amendment is narrowly drawn and is clearly restrictive. Moreover, Section 111(b) of the Customs and Trade Act of 1990, which contained the amendment addressing the agricultural products issue, in entitled "Limitations on Fees." There is no indication, expressed or implied, that Congress intended to alter the well-established principle, previously recognized by Customs, that the fee does not apply to domestic content.

This is a most unusual situation which merits serious reconsideration. The background on this issue is convoluted. We do not believe that there is any legal basis for the U.S. Customs Service's position on this matter. Further, we are certain Congress did not intend and does not support such a change. The Merchandise Processing Fee Technical Corrections provision was introduced in both the 102nd and 103rd Congress but was not enacted. In the 102nd Congress, the provision was approved by both the House and Senate but it was attached to separate trade and tax legislation which was vetoed in the Fall of 1992 (for other reasons) by President Bush. In the 103rd Congress, the MPF technical correction was approved by the House on May 17, 1994 as part of HR 3419, "The Tax Simplification & Technical Corrections Act" but the measure eventually died because the Senate did not consider this bill. The corrective technical legislation which is required is as follows:

A BILL

To amend the Consolidated Omnibus Budget Reconciliation Act of 1985 to clarify the limitation of customs user fees with respect to foreign trade zones.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON CUSTOMS USER FEES.

(a) IN GENERAL. – Section 13031(b)(8)(D) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. § 58c(b)(8)(D)) is amended –

(1) by striking out "and" at the end of clause (iv);

(2) by striking out the period at the end of clause (v) and inserting ";and"; and

(3) by inserting after clause (v) the following new clause:

> "(vi) in the case of merchandise entered from a foreign trade zone, be applied only to the value of the merchandise subject to duty under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c)."

(b) EFFECTIVE DATE – The amendments made by subsection (a) apply with respect to entries or withdrawals from warehouse for consumption of articles on or after December 1, 1986. Notwithstanding any other provision of law, formal entries of merchandise on which the fee established by paragraphs (9) and (10) of section 13031(a) of the Omnibus Budget Reconciliation Act of 1985, as enacted and as amended (19 U.S.C. section 58c(a)(9) and (10)), was determined or collected in an amount in excess of the dutiable value of such merchandise shall be reliquidated, upon the request of the importer of record, to provide solely for the recalculation of the fee and the refund of any such excess fee collected. No other aspect of such entry shall be subject to reliquidation under this section.

The technical corrections legislation to clarify that the ad valorem merchandise processing fee applies only to the foreign value of merchandise entered from a foreign-trade zone is long overdue and is extremely important to the NAFTZ and it members. For these reasons, we strongly urge the inclusion of this technical amendment in the 1995 technical corrections and render our support for the passage of these corrections.

We look forward to working with you on this matter. Please contact Ms. Brandi Hanback, Executive Director if we can provide additional background information or be of any further assistance. Thank you for your consideration of this matter.

Very truly yours,

Greg Jones

Greg Jones
President

[The attachment is being held in the committee files.]

SMITH DAWSON & ANDREWS

*A public affairs company*

March 15, 1995

Christopher Smith, Majority Staff
Committee on Ways & Means
1102 Longworth House Office Bldg.
Washington, DC 20515

**Re: Clarification of the Applicability of the Merchandise Processing Fee on Domestic Content in Foreign Trade Zones**

Dear Chris:

On behalf of the National Association of Foreign Trade Zones, I am writing to request that the enclosed amendment be included on an appropriate "Technical Corrections" Bill originating in the Ways & Means Committee. I understand that HR1121 did not include any Trade "technicals" but that a second bill may be introduced.

The enclosed provision was part of HR3419 "The Tax Simplification & Technical Corrections Act" that passed the House last year. The provision simply clarifies that the merchandise processing fee shall not apply to domestic content in foreign trade zones. The provision is supported by Customs. The attached language is identical to that included in HR3419.

If you have any questions, please call me.

Thank you for your consideration.

Sincerely,

James P. Smith

enclosure

1000 Connecticut Avenue, NW, Suite 302
Washington, DC 20036
202-835-0740 / FAX 202-775-8526

103rd Congress

**(HR3419 - Tax Simplification & Technical Corrections Act)**

**!!SEC. 1022. CLARIFICATION REGARDING THE APPLICATION OF CUSTOMS USER FEES.!!**

(a) IN GENERAL.--Subparagraph (D) of section 13031(b)(8) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(b)(8)(D)) is amended--

(1) by striking "and" at the end of clause (iv);

(2) by striking the period at the end of clause (v) and inserting "; and"; and

(3) by inserting after clause (v) the following new clause:

"(vi) in the case of merchandise entered from a foreign trade zone (other than merchandise to which clause (v) applies), be applied only to the value of the privileged or nonprivileged foreign status merchandise under section 3 of the Act of June 18, 1934 (commonly known as the Foreign Trade Zones Act, 19 U.S.C. 81c)."

(b) EFFECTIVE DATE.--The amendments made by subsection (a) apply to--

(1) any entry made from a foreign trade zone on or after the 15th day after the date of the enactment of this Act; and

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if the entry was not liquidated before such 15th day.

(c) APPLICATION OF FEES TO CERTAIN AGRICULTURAL PRODUCTS.--The amendment made by section 111(b)(2)(D)(iv) of the Customs and Trade Act of 1990 shall apply to--

(1) any entry made from a foreign trade zone on or after the 15th day after the date of the enactment of this Act; and

(2) any entry made from a foreign trade zone after November 30, 1986, and before such 15th day if the entry was not liquidated//, or if the liquidation has not become final,\\ before such 15th day.

---

NESTE TRIFINERY
PETROLEUM SERVICES

6600 Up River Road (78409) • P.O. Box 9606 • Corpus Christi, Texas 78469-9606 • 512-289-6762 • Fax 512-289-1351

May 24, 1995

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth Hose Office Building
Washington, D.C. 20515

RE: SUPPORTIVE COMMENTS ON THE TECHNICAL CORRECTIONS LEGISLATION
PRESENTED BY CONGRESSMAN PHILIP CRANE

The above legislation clarifying the merchandise processing fee as it applies only to the foreign value of merchandise entered from a foreign trade zone is needed and supported.

Neste Trifinery is a Foreign Trade Subzone, and we strongly support the above legislation. the technical correction is necessary to resolve the intent of the law. without passage of the technical correction legislation we are forced into a position of paying a fee on products with value added domestically. to demonstrate how outrageous this is, consider the following: zone users are required to pay merchandise processing fees on the domestic value added in the zone, but the fees are not applied to Canadian goods. this is unconscionable. Due to NAFTA, the MPF has been completely phased out, yet we are charged a fee on materials, labor, overhead and profit associated with our own country.

Passage of this legislation is necessary to level the playing field for American companies and keep us competitive in the marketplace.

Thank you for your time and consideration in this matter.

Sincerely,

Phyllis Busby

Phyllis Busby
Foreign Trade Zone Coordinator

cc: Brandi Henback, NAFTZ Executive Director

**Richmond International Airport • Foreign-Trade Zone #207**

May 22, 1995

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Re: Supportive Comments on the Technical Corrections Legislation Presented by Congressman Philip Crane

The above legislation clarifying the merchandise processing fee as it applies only the the foreign value of merchandise entered from a foreign trade zone is needed and supported.

Richmond International Airport, Foreign Trade Zone No. 207 strongly supports the above legislation. The technical correction is necessary to resolve the intent of the law. Without passage of the technical correction legislation we are forced into a position of paying a fee on products with value added domestically. To demonstrate how outrageous this is, consider the following: zone users are required to pay merchandise processing fees on the domestic value added in the zone, but the fees are not applied to Canadian goods. This is unconscionable. Due to NAFTZ, the MPF has been completely phased out, yet we are charged a fee on materials, labor, overhead and profit associated with our own country.

Passage of this legislation is necessary to level the playing field for American companies and keep us competitive in the marketplace.

Thank you for your time and consideration in this matter.

Sincerely,

Susan C. Jones

Susan C. Jones
Foreign Trade Zone Coordinator

David L. Blackshear, *A. A. E., Executive Director* • Susan K. Clark, *Marketing Manager* • Susan C. Jones, *FTZ Coordinator*

Box A-3 • Richmond, Virginia • 23231-5999 • 804/236-2102 • FAX 804/222-6224

**SIA** SEMICONDUCTOR INDUSTRY ASSOCIATION

May 26, 1995

Phillip D. Moseley,
Chief of Staff, Committee on Ways & Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515.

Dear Mr. Moseley,

The Semiconductor Industry Association (SIA) strongly supports the inclusion of H.R. 947 in the trade technical corrections package to be considered by the Ways & Means Committee. H.R. 947 is a deficit-neutral bill that provides an important exemption from the U.S. requirement to mark semiconductors and their containers with country of origin.

The primary objective of the bill is to eliminate problems related to conflicting origin determinations among the principal semiconductor consuming countries: the U.S., EU member nations, and Japan. Another important benefit of the bill is the elimination of the ever-higher cost of marking increasingly smaller devices.

There is a near unanimous view in the industry that country of origin marking requirements offer little benefit, at great cost, to the international trade of semiconductors.

The marking law that this bill seeks to amend is designed to enable purchasers of products to make an informed buying decision based on the country of origin. Purchases of semiconductors overwhelmingly consist of original equipment manufacturers who generally are aware of where the product is made through the qualification process.

SIA members, however, are highly aware of the interest of governments around the world in also knowing the origin of semiconductors. While origin information is routinely conveyed on shipping documents, our membership has nevertheless committed itself to the development of a uniform coding system to satisfy international origin requirements for semiconductors. Development of the coding system is taking place in conjunction with users of semiconductors, who need origin information to satisfy origin-related requirements around the world. This system will actually provide more origin information than is required under U.S. marking requirements, while eliminating mislabeling and other concerns imposed by these requirements in international markets.

Due to the time needed to develop and implement this system, it is likely that the bill's effective date of January 1, 1996 will need to be changed to some later date. A determination as to whether the date should be extended will be made soon. SIA would appreciate meeting with you or your staff to discuss this matter prior to markup.

In sum, passage of H.R. 947 will provide both short-term and long-term benefits on a deficit-neutral basis. SIA therefore urges you to pursue the incorporation of this bill in the technical trade corrections package. Without passage of the bill in 1995, industry interest in pursuing a uniform coding system could diminish.

Sincerely,

David W. Rose
SIA Project Director,
H.R. 947

4300 Stevens Creek Boulevard, Suite 271 ■ San Jose, California 95129 ■ 408-246-2711 Fax 408-246-283(

SMITH CORONA®

May 25, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: Committee on Ways and Means Request for Written Comments on Technical Corrections to Trade Legislation (Advisory No. TR-8, April 25, 1995)

Dear Mr. Moseley,

The Subcommittee on Trade of the Committee on Ways and Means, U.S. House of Representatives, has requested written comments for the record from all parties interested in technical corrections to recent trade legislation. Smith Corona Corporation, an international manufacturer of small office equipment and operator of Foreign-trade subzone 90A located in Cortland, New York, strongly supports the proposed technical amendment which would clarify the application of Customs ad valorem merchandise processing fee (Section 111(b)(2)(D)(v)of the Customs and Trade Act, Section 1303(b)(8)(D)) to only the foreign value of merchandise entered from a foreign-trade zone.

Under the Foreign-Trade Zones Act, "duties and taxes shall be payable on the quantity of such foreign merchandise used in the manipulation or manufacture of the entered article." As a result, only the value of the foreign merchandise entered into the United States from the foreign-trade zone appears as the dutiable value on the Customs entry. This value is the basis for the assessment of duties and taxes. That Congress intended that this same entered value be utilized as a basis for the calculation of the merchandise processing fee is reflected in the language of the House Conference Report No. 99-1012 (10/17/86, p. 388) that imposed the original user fee "on all formal entries of imported merchandise...based on the <u>appraised Customs value</u> of such merchandise". (Emphasis added.)

SMITH CORONA CORPORATION • P.O. BOX 2020, CORTLAND, NY 13045-2020 TEL (607) 753-6011 FAX (607) 753-8769

Despite the apparent intent of Congress, U.S. Customs has taken the position that since the current legislation does not specifically exclude domestic value added to the merchandise, then the merchandise processing fee is to be assessed on the total domestic and foreign value of merchandise entered from a foreign-trade zone. Thus, U.S. Customs is charging a user fee on U.S. materials, U.S. labor, and U.S. overhead. The assessment of a U.S. Customs user fee on U.S. value added services clearly does not create any incentive for companies manufacturing in U.S. foreign-trade zones to increase their investment in U.S. materials, labor or overhead.

Although Congress certainly never intended for the Customs merchandise processing fee to be charged on U.S. value added to merchandise produced in a foreign-trade zone, the absence of specific language to that effect has led to U.S. Customs misinterpretation of the value upon which to base the ad valorem percentage of the merchandise processing fee. Therefore, the proposed technical correction is necessary to clarify for all parties concerned that the merchandise processing fee is applicable only to the value of the foreign merchandise entered from a foreign-trade zone for consumption.

Thank you for providing the opportunity for Smith Corona Corporation to demonstrate their support for the proposed statutory amendment and to strongly urge that it be included in the current Technical Corrections legislation.

Sincerely,

Karen L. Sager

Karen L. Sager
Customs Administrator

SOLECTRON

May 24, 1995

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Subject: Supportive Comments On The Technical Corrections Legislation Presented By Congressman Philip Crane

Solectron is researching into applying for a Foreign Trade Zone. As a large importer, it is important for us to support the above legislation in regard to the merchandise processing fee. We feel that the technical correction is needed in order to resolve the intent of the law. We don't understand how merchandise processing fee exists for the U.S. portion of an article when for products of Canadian origin this fee is zero. We feel that the processing fee should exist only in foreign made articles and only on the foreign made portion of that article. This not only make sense but it is outrageous.

We feel that this legislation must be passed so that American companies can keep their competitive edge in the marketplace.

Thank you for taking the time to read this letter.

Sincerely,

Sonia Carvalho
Worldwide Export/Import
Solectron Corporation

*Solectron Corporation*
777 Gibraltar Drive, Milpitas, California 95035 (408) 957-8500 FAX (408) 956-6075

**south carolina state ports authority**

Post Office Box 817, Charleston, South Carolina 29402-0817 Telephone 803/723-8651

May 25, 1995

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

Subject: Supportive Comments on the Technical Corrections Legislation Presented by Congressman Philip Crane

The South Carolina State Ports Authority, grantee for Foreign-Trade Zone Nos. 21 and 38, supports the amendment to the Customs and Trade Act of 1990, which clarifies the application of customs user fees (Section 111(b)(2)(D)(v) of the Customs and Trade Act, Section 13031(b)(8)(D) of the Consolidated Omnibus Budget Reconciliation Act of 1985, and 19 U.S.C. 58c(b)(8)(D). This amendment is needed to clarify the correct application of the ad valorem merchandise processing fee (MPF).

Our feeling is that the intent was never meant to apply to the domestic value of merchandise being entered from a foreign-trade zone (FTZ) and that the interpretation just needs clarification. We believe that Customs' intention was to have the MPF apply only to the foreign value contained in the merchandise being brought into the commerce of the United States from foreign-trade general purpose zones and subzones.

We further believe that it is not the intent of Congress that, under NAFTA, Canadian and Mexican goods actually receive preferential treatment on the MPF over American goods. The MPF for Canadian goods has been reduced to 0.0%; the MPF for Mexican goods remains at 0.19%; and the MPF for the rest of the world, under NAFTA, has risen to 0.21%. This actually penalizes goods of U.S. origin!

On behalf of our general purpose foreign-trade zone and subzone users, we urge your strong support for passage of this amendment. We feel it is in the best interest of all businesses operating in foreign-trade zones in the United States. Without its passage, their operations and competitiveness would be jeopardized.

Thank you for your prompt attention to this urgently needed amendment.

Sincerely,

Joan M. Wiggins
Foreign-Trade Zones Administrator

JMW/ci

cc: Mr. Robert A. Loy
Ms. Carolyn S. Inabinet
Mr. Michael McGinnis

Ms. Brandi B. Hanback
National Association of Foreign-Trade Zones

Storage Technology Corporation
2270 South 88th Street
Louisville, CO 80028-0001
(303) 673-5151

**StorageTek**

May 17, 1995

Mr. Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
US House of Representatives
1102 Longworth House Office Building
Washington, DC 20515

Dear Mr. Moseley:

RE: Technical corrections to the recent trade legislation, Congressman Phillip M. Crane's (R-IL) request for written comments.

As a user of a foreign-trade subzone Storage Technology Corporation (StorageTek) strongly supports this legislation. StorageTek believes the Customs ad valorem merchandise fee (Section 111(b) (2) (D) (v) of the Customs and Trade Act, Section 1303 (b) (8) (D) should apply only to the foreign value of merchandise entered from a foreign-trade zone. StorageTek believes the legislation never intended for the merchandise processing fee to be charged on domestic materials, labor, overhead and profit associated with merchandise produced in a foreign-trade zone. StorageTek believes this technical correction is necessary in order to further the intent of the laws and regulations concerning foreign-trade zones and the payment of merchandise processing fees.

Any concern(s) or questions please call me at (303)673-5889.

Sincerely,

Scott W. Rodman

Scott W. Rodman
Advisory Tax Analyst
Corporate Tax Department

SR/rs

cc: Stan Crouse, State Income Tax and Customs Duties Manager, Storage Technology Corporation
Larry Thurston, Vice President Tax, Storage Technology Corporation

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May 26, 1995

Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

Re: Proposed Technical Corrections to Trade Legislation

On behalf of the Torrington Company, a major domestic manufacturer of antifriction bearings, we hereby submit the following in response to the invitation to comment concerning the captioned matter. The Torrington Company has been a petitioner and active participant in proceedings involving the antidumping and countervailing duty laws, recently amended by the Uruguay Round Agreements Act. The amendments announced by the Ways and Means Committee on April 25, 1995, do not include any technical changes to the antidumping or countervailing duty provisions of that Act. The Torrington Company strongly supports a bill that does not make any substantive changes to these provisions.

Over the course of the legislative process leading up to the submission of H.R. 5110, there was a vigorous and comprehensive debate concerning not only the implementation of the Uruguay Round, but also the functioning of our unfair trade laws. Over the course of that debate, many issues, such as "short supply," "compensation," and so forth, were advanced, debated, and ultimately omitted from the final bill. Torrington trusts that the Committee will not permit such issues to be again raised in the form of a "technical" correction to the legislation. Such treatment is both an inappropriate description of substantive changes and an unfair process for considering major substantive changes.

In particular, Torrington is concerned with the potential that various proponents of a "short supply" or "no supply" provision may propose that such an amendment be added to the law in the form of a "technical" correction. This provision was hotly debated, brought up before the Subcommittee on Trade of the Committee on Ways and Means, and defeated by a vote of that Subcommittee in the course of the "mock" markup of the Uruguay Round implementing legislation. It is inappropriate that the same provision might be so soon reconsidered or that it should be passed off as merely "technical."

On the merits, a "short supply" or even a "no supply" provision, one which would permit imports otherwise covered by an antidumping or countervailing duty order to escape the imposition of duty whenever a U.S. producer did not offer a competing bid or product, is fundamentally at odds with the purpose of the law. Such a provision rewards the most effective dumpers, those who have reduced or eliminated domestic capacity.

A short supply/no supply provision would not provide market signals (i.e., what fair value is on particular items) so that U.S. companies would be able to determine whether to reinvest in the market, either by expanding capacity or adding tooling and equipment to produce a new model. If prices below fair value persist, entry by U.S. companies will be discouraged by the lack of an adequate return on investment. This will guarantee that the U.S. does not receive the investment and jobs that would otherwise return to the U.S. following a dumping order and correction of price discrimination. In the bearing cases roughly $1 billion in investment was lost because of dumping in the late 1970's and 1980's. Since the orders, nearly $1 billion has been reinvested. Most would not have been reinvested had the proposed "No Supply Provision" been in place either because foreign producers could have continued to export from abroad at dumped prices or because domestic producers would not have seen price changes in the market to indicate what "fair prices" should be and hence make business decisions on reentering or expanding capacity.

Contrary to the popular claims, there is never a "no supply" shortage when an antidumping or countervailing duty order is imposed. Nor is there any "unfairness" to purchasers who are merely asked to pay fair value.

- An antidumping duty order does not restrict supply at all.

- An order is different than a quota or voluntary restraint agreement where bona fide shortages can occur based on demand fluctuations and where a no supply provision such as described makes sense.

- An order is supposed to eliminate or reduce an artificial price advantage of buying foreign product. Purchasers cannot be heard to complain when that occurs. Yet during the last two years, companies who have sought the "no supply" or "short supply" provision have admitted that what they want is not domestic supply but the dumped price.

In addition to the foregoing concern regarding any short-supply provision, the Committee should also beware of any attempts to make "technical" changes to the manner in which antidumping duties are assessed following a determination by the Commerce Department of the amount owed, but pending completion of any judicial review. At various points over the past three years, there have been attempts to amend the trade laws so that a U.S. subsidiary of a foreign manufacturer would be able to obtain a refund of antidumping duty deposits made with Customs before the courts finally determine the correct amount of duty owed. Any "correction" of the URAA to address this situation is neither "technical" nor warranted.

First, agency final determinations are often found to be in error at the Court of International Trade with dumping margins increasing (or decreasing) significantly after judicial review. Under the statute, however, overpaid duties are not refunded and additional duties are not collected, prior to final completion of all appeals.

Second, the various draft proposals with respect to this issue during the last Congress were designed so that there would only be a "one-way" refund of overpaid duties prior to final judicial action. The terms of such proposals did not provide for collection of additional duty in the case where Commerce review indicated underpayment. Such a one-sided approach is an outrage to domestic industries materially injured by unfair trade.

Third, some variants of the proposal would provide foreign dumpers and incentive to invest in the United States in order to obtain a premature refund of duties paid. Yet, this would reward the very companies found guilty of dumping. At the same time, the U.S. industries that were materially injured by the dumping would be waiting for a return to profitability under conditions of fair trade in order to reinvest and renew their business. In effect, the proposal would support dumpers and stifle the ability of U.S. industry to return to profitability and to re-open shuttered domestic capacity.

Fourth, such proposals have been marketed on the theory that they would reduce interest costs incurred by the Treasury on refunds of overpaid duties. But, if the concern is the potential cost to the government (which it is obviously not), simpler solutions exist. The most obvious is to reduce the interest rate on refunds to the amount of the U.S. government's borrowing rate.

In addition to the foregoing points, the various proposals to amend the provisions relevant to assessment of duties were never subject to hearings on either the House or Senate side and were not circulated for consideration by either Committee. By design, the "technical" changes to the assessment process failed to provide due process rights to the domestic industry to participate in the refund-calculating process. For all of these reasons, such a proposal should not be entertained as a "technical" correction or slipped into the trade laws in a bill intended to deal with typographical and ministerial errors, not fundamental shifts in the duty-collection process.

Thank you for your attention to these issues.

Respectfully submitted,

Terence P. Stewart
James R. Cannon, Jr.
STEWART AND STEWART

Special Counsel for
The Torrington Company

**TRIANGLE J COUNCIL OF GOVERNMENTS**

World Class Region

100 Park Drive, P.O. Box 12276
Research Triangle Park, NC 27709
919.549.0551 fax: 919.549.9390

May 25, 1995

Philip D. Moseley
Chief of Staff
Committee on Ways & Means
U. S. House of Representatives
1102 Longworth HOB
Washington, DC 20515

RE: **Technical Corrections Legislation Offered by Congressman Philip Crane**

Dear Sir: By FAX 202-225-2610

This is written in strong support of the legislation clarifying the merchandise procession fee as it applies only to the foreign value of merchandise entered from a foreign trade zone.

Triangle J Council of Governments is the Grantee for FTZ # 93. Our staff also acts as the grantee representative for three FTZ grants to the State of North Carolina: # 57 in Charlotte, # 66 at the Port of Wilmington and # 67 at the Morehead City Port. North Carolina has an application (for which I am on record as a supporter) before the US FTZ Board for a general purpose zone for the Global TransPark in Kinston, North Carolina. This letter reflects the support of all of the Foreign Trade Zones in the state of North Carolina.

The technical corrections of the legislation will help fulfill the original intent of the legislation, without which FTZ users are forced to pay fees on products with value added domestically while no such fees are applied to Canadian goods. Due to NAFTA the merchandise processing fees have been phased out, yet our FTZ users are charged a fee on materials, labor, overhead and profit associated with our own country. Passage of the technical corrections legislation is necessary for American Companies to have a more level playing field in international trade.

Thank you for your attention to this matter.

Sincerely,

Pamela Davison, FTZ Representative

CC: Senator Jesse Helms & Senator Lauch Faircloth
Bill King, NCDOC, Jim Phillips & Jim Sughrue, Global TransPark

SUBCOMMITTEE ON TRADE
COMMITTEE ON WAYS AND MEANS
HOUSE OF REPRESENTATIVES

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TECHNICAL AMENDMENTS
CUSTOMS AND TRADE ACT OF 1990,
AS AMENDED BY
URUGUAY ROUND AGREEMENTS ACT OF 1994
(COMMITTEE ADVISORY NO. TR-8)

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STATEMENT ON BEHALF OF
U.S.-FLAG VESSEL OWNERS AND OPERATORS

## I

## Introduction

In response to the Committee's Advisory No. TR-8, Givens And Kelly submits this statement on behalf of its clients who are U.S.-flag vessel owners or operators and who are located in Houston, Texas, and other cities in the United States. This statement is made in support of the attached proposed technical amendment to Section 484E of the Customs and Trade Act of 1990, 19 U.S.C. § 1466(h), as recently amended by Section 112, Title I, Subtitle B of the Uruguay Round Agreements Act of 1994.

## II

## CONGRESS ENACTED SECTION 484E OF THE CUSTOMS AND TRADE ACT OF 1990 TO END UNJUST, DESTRUCTIVE TARIFF DISCRIMINATION AGAINST U.S.-FLAG LASH BARGE CARGO CONTAINERS AND UNFAIR, UNJUSTIFIABLE, OPPRESSIVE TARIFF ASSESSMENTS AGAINST VESSEL PARTS, MATERIALS AND EQUIPMENT PURCHASED IN THE UNITED STATES OR ABROAD

In 1990, evidence was presented to the Subcommittee on Trade of the house Ways and Means Committee which established that the under the Vessel Repair Statute, 19 U.S.C. § 1466, Customs was imposing serious tariff discrimination on U.S.-flag LASH barge cargo containers and extremely unfair, unjustifiable tariff assessments on vessel parts, materials and equipment purchased by U.S.-flag vessels in the United States and overseas.[1]

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[1] See Ways and Means Committee Print No. 101-32, 101st Cong., 2d Sess., p. 21 (6/25/90).

**UNJUSTIFIABLE, OPPRESSIVE DUTY ASSESSMENTS**
**AGAINST VESSEL PARTS, MATERIAL AND EQUIPMENT**

The relevant statute, 19 U.S.C. § 1466(a) states, inter alia,

> "The equipments...or the repair parts or materials to be used, or the expense of repairs **made in a foreign country** upon a vessel...shall, on the first arrival of such vessel in any port of the United States, be liable to entry and the payment of an ad valorem duty of 50 per centum **on the cost thereof in such foreign country**...." (emphasis added)

From the language of the statute, it is obvious that 19 U.S.C. § 1466(a) was not intended to apply to purchases made in the United States. The vessel repair statute was intended to apply only to foreign **costs in such foreign country.**

**LEGISLATIVE HISTORY**

This is apparent from the legislative history. The Senate Reports indicate that the 50% duty was intended to apply to "the cost of **equipment purchased** or repairs made **in a foreign country** by a United States Vessel." Senate Reports 1-473, 71st Congress, Vol. 1, page 72 (Emphasis added). This is also evident in the House Reports which stated that "Section 3114 places a duty of 50 per cent on the **cost of equipment** and repairs **purchased for** or made upon **vessels** of the United States **in foreign countries.**" House Reports 1-495, 71st Congress, Vol. 1 page 171 (Emphasis added).

In 1982, the Statute was amended to provide an exemption from duty for all costs incurred after six months after the vessel's last departure from the United States, where a U.S.-flag vessel is away from the United States for two years or more. In the legislative history prior to the passage of the amendment Congressman Snyder stated that:

> "Currently U.S.-flag vessels are assessed a 50 per cent ad valorum duty on the **cost of equipment, parts or materials purchased** for, and repairs made to, U.S. flag vessels **in a foreign country**, unless necessitated by an emergency." Congressional Record page E 859, March 9, 1982 (Emphasis added).

**ADMINISTRATIVE INTERPRETATION**

Customs also once held the view that U.S. purchases were not covered under 19 U.S.C. § 1466(a). In Customs Headquarters Ruling #102154, Customs held if "vessel parts are imported into the United States...and duty is paid on those parts...the part would not be subject to duty under section 1466...since the purchase is not within the contemplation of section 1466." Later in Customs Headquarters Ruling #104700, Customs held that if parts are purchased in the United States the cost of the parts is not subject to duty under 19 U.S.C. § 1466. In 1988 Customs Headquarters Memorandum (Guidelines) #109408 stated that if a vessel owner purchases repair items previously imported, duty paid under the TSUS, and those items are installed abroad, the repair items are not dutiable under 19 U.S.C. § 1466(a). This view (interpretation) at Customs only changed in 1988, while it was under the scrutiny of a GAO investigation prompted by complaints by the U. S. shipbuilders. (See GAO/RCED 89-152 and Customs Headquarters Ruling Letter 109703).

In 1990, evidence was presented to this Committee regarding "The Spare Parts Dilemma Under The [Vessel Repair] Statute."[2] The Committee was advised that large ocean liner vessels must carry spare parts, material and equipment which can be utilized, where and when necessary, on long voyages or during port calls in foreign countries.[3] Under the Vessel Repair statute, 19 U.S.C. § 1466(d)(2), vessel parts and equipment manufactured or produced here in the United States or the vessel's regular crew were clearly not subject to duty. But, beginning in 1988, the Customs Service interpreted the Vessel Repair Statute, 19 U.S.C. § 1466, to mandate assessment of the high 50% ad valorem duty rate on the same American-purchased parts and equipment if same were installed by foreign workers in a foreign shipyard.[4]

The confusion and inequity involved for U.S.-flag vessel operators were magnified by the fact that, for economic reasons, many U.S.-flag vessels were constructed in recent years in foreign shipyards. In those instances, many spare parts or repair parts for those vessels simply could not be obtained in the United States, so they had to be purchased abroad and imported into the United States.

Under Customs' rules and decisions, foreign parts and equipment acquired before newly-built vessels were documented under the U.S. flag were not subject to duty under the Vessel Repair statute, but parts and equipment thereafter purchased from foreign suppliers and brought to the United States by the vessel itself were held to be dutiable at the oppressive 50% ad valorem rate under the Repair statute.[5]

However, if those same foreign parts and equipment were delivered to the United States by air or aboard another vessel, they could enter this country at the far lower commodity duty rates specified by the Harmonized Tariff Schedule.[6] But then, under Customs' new interpretation of the Vessel Repair Statute (in 1988), they became subject to "double duty" if they were later installed on a U.S.-flag vessel in a foreign shipyard.[7]

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[2] See Ways and Means Committee Print No. 101-32, 101st Cong., 2d Sess., p. 22 (6/25/90).

[3] Id.

[4] Id., at p. 23.

[5] Id.

[6] Id.

[7] As the 1990 record before this Committee demonstrates, on April 19, 1989, Customs issued a set of "easily applied rules," No. 5 of which stated:

> "5. The dutiability of foreign made repair parts/materials under § 1466 is not affected by the fact that they may have been previously imported, duty paid, into the United States and then exported for installation or placement aboard a vessel. They are subject to duty ["double duty"] under § 1466 upon first arrival of the vessel."

Confronted with these confusing, debilitating tariff rules and assessments, the U.S. maritime industry as a whole urged this Committee to exempt vessel spare repair parts and equipment from duty liability under the Vessel Repair statute.[8] In order to correct the faulty interpretation of the statute by Customs, Congress passed 19 U.S.C. § 1466(h). In response to the maritime industry's requests, Congress added an exemption from duty for parts purchased outside the United States and thereafter imported duty paid under the HTSUS classification for that particular item.

The Customs and Trade Act of 1990, Section 484E(a) provided:[9]

"Sec 484E. Foreign Repair of Vessels

"(a) In General - Section 466 of the Tariff Act of 1930 (19 U.S.C. § 1466) is amended by adding at the end thereof the following new subsection.

"(h) The duty imposed by subsection (a) of this section shall not apply to ------....

"(2) the cost of spare repair parts or materials... which the owner or master of the vessel certifies are intended for use aboard a cargo vessel, documented under the laws of the United States and engaged in the foreign or coasting trade, for installation or use on such vessel, as needed, in the United States, at sea, or in a foreign country, buy only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part purchased in, or imported from, a foreign country."

On the Senate floor, Chairman Breaux emphasized that the 1990 legislation was thus intended "to eliminate" unfair, oppressive duty assessments on vessel spare parts imported by U.S.-flag vessel operators from abroad.[10] The Senate Finance Committee Report issued in support of the legislation stated, in turn: "[The bill] exempts vessel spare repair parts and materials from application of the 50 percent vessel repair duty provided that duty was paid under the appropriate HTS commodity classification upon first entry into the United States."[11] The Senate report goes on to state, at p. 38:

> "This section applies to spare parts carried aboard an individual vessel as well as to fleet spare parts and materials stored on land, provided they are intended for installation or use aboard a cargo vessel. This section is intended to ensure that vessel owners will pay duty on such parts and materials only once, at the time of first entry into the United States."

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8 WMCP 101-32, pp. 20-36.
9 See 19 U.S.C. 1477(h)(2).
10 See Congressional Record, 4/20/90, at p. S4715.
11 S.Rept. 101-252, 101st Cong., 2d Sess., p. 38.

III

**THE U.S. TRADE REPRESENTATIVE FAILED TO NEGOTIATE, AS ANTICIPATED, AN INTERNATIONAL AGREEMENT PROVIDING FOR TOTAL REPEAL OF THE VESSEL REPAIR STATUTE BY THE END OF 1992. CONGRESS THUS IMMEDIATELY SOUGHT TO EXTEND THE 1990 EXEMPTIONS, AND THE CUSTOMS SERVICE ADMINISTRATIVELY SUSPENDED APPLICATION OF THE REPAIR STATUTE TO LASH BARGES AND VESSEL REPAIR PARTS. CONGRESS THEREUPON MADE THE TWO EXEMPTIONS PERMANENT, AND CLARIFIED THE PARTS EXEMPTION.**

When the Customs and Trade Act was before Congress in 1990, the U.S. Trade Representative (USTR) was attempting to negotiate with the European Union, Norway, Finland, Sweden, Japan and Korea a multilateral shipbuilding agreement that would eliminate ship construction and repair subsidies and other distortive trade practices. One of the USTR's "bargaining chips" was proposed total repeal of the United States' Vessel Repair statute, 19 U.S.C. § 1466.

Thus, when Congress proposed to amend that statute in 1990 to exempt LASH barge repairs and vessel spare parts, the USTR requested that, in order not to dilute the United States' bargaining position in the aforesaid negotiations, an initial two-year limitation be placed on those exemptions. In support of that request, the USTR estimated that, by the end of 1992, an international agreement would be in place and the Vessel Repair statute would probably be repealed in toto.[12]

Unfortunately, however, the aforesaid negotiations were more difficult that predicted. Indeed, in April 1992, those negotiations were actually broken off for a one-year period, and they were not resumed until the summer of 1993.

Consequently, Congress -- which in response to the USTR's requests, had placed an initial two-year limitation on the 1990 LASH barge and spare parts exemptions from the Vessel Repair statute -- immediately moved to extend those exemptions from the Vessel Repair statute -- immediately moved to extend those exemptions or make same permanent. Thus, on June 30, 1992, the Ways and Means Committee favorably reported the Miscellaneous Tariff Act of 1992, H.R. 4318, 2108 of which extended the two exemptions through December 31, 1994. The Committee Report, H.Rept. 102-634, 102d. Cong. 2d Sess., stated at p. 88:

> "This provisions extends the current duty exemption through December 31, 1994. The duty exemption is expanded to also apply to spare parts necessarily installed prior to first entry into the United States. Spare parts not installed may be inspected by the U.S. Customs Service on-board ship; unloading them on the dock is not mandatory."

The House thereupon passed that legislation without objection. However, along with most other important bills, it died in the Senate in late 1992 as a result of legislation gridlock.

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12 The two-year limitation was contained in Section 484 E(b) of the Commerce and Trade Act of 1990, 19 U.S.C. 1466 note.

On November 25, 1992, Chairman Breaux of the Senate Merchant Marine Subcommittee thus wrote to the U.S. Customs Service requesting that enforcement of the Vessel Repair statute against LASH barge repairs and vessel spare parts and equipment be administratively suspended until Congress can "continue [these] duty exemptions." The Customs Service agreed, so liquidation of entries and collection of duty on those exempt items remained suspended during 1993, 1994 and the early months of 1995.

Legislative gridlock continued to plague the Congress through 1993 and most of 1994. On February 24, 1993, however, Senator Breaux introduced S.428, 103d Cong., 1st Sess., and on March 1, 1993, Representative Tauzin introduced H.R. 1160, both of which proposed to make the LASH barge repair and vessel repair parts exemptions permanent. Mr. Tauzin's bill was referred to this Committee for action.

Finally, therefore, in late 1994, Congress enacted the GATT Uruguay Round Agreements Act, Pub.L. 103-465, Section 112, Title I, Subtitle B of which made both exemptions permanent. In addition, Section 112(b) added a new subsection (3) to 19 U.S.C. § 1466(h), which reads as follows:

> "(b) Exemption For Certain Spare Parts - Section 466(h)of the Tariff Act of 1930 (19 U.S.C. § 1466(h)) is amended...
>
> "(3) by adding at the end the following new paragraph:
>
> "(3) the cost of spare parts necessarily installed before the first entry into the United States, but only if duty is paid under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States of each such spare part purchased in, or imported from a foreign country."[13]

IV

**ENACTMENT OF THE PROPOSED**
**TECHNICAL AMENDMENT IS ESSENTIAL.**

When Congress enacted the GATT bill late last year, Section 112 -- like a host of other provisions in that legislation -- made the permanent LASH barge and spare parts exemptions effective "on or after the date of the entry into force of the WTO Agreement with respect to the United States" (See § 112(a)(3), Pub.L. 103-465, Title I, Subtitle B). That date, of course, was January 1, 1995.

As a result, the U.S. Customs Service -- which administratively suspended enforcement of the Vessel Repair statute against LASH barge repairs and vessel spare parts and equipment during 1993 and 1994 until Congress could act -- is now

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13 It is noteworthy that now pending before Congress for approval or disapproval is an international agreement finally negotiated by the USTR in late 1994, known as the OECD Shipbuilding Agreement, which inter alia, provides for gradual total repeal of the Vessel Repair Act, 19 U.S.C. 1466.

contending that it has no alternative but retroactively to enforce the statute against all LASH barge and spare parts entries made during that same two-year period.

Obviously, therefore, unless Congress enacts the proposed technical amendment, the Customs Service will again impose unjust tariff discrimination and unjustifiable duty collections on U. S. purchased vessel parts and equipment which were not intended to be covered under the Statute, and, which Congress intended to "end" and "eliminate" in 1990. Moreover, without the technical amendment, the U.S.-flag maritime industry will be unfairly retroactively penalized for Congressional gridlock that arbitrarily prevented effective legislative action in this instance until the GATT bill was presented for Congressional approval in late 1994. Finally, without the technical amendment, the Vessel Repair statute will be discriminatorily and retroactively reimposed in 1995 on items Congress exempted in 1990, and at a time when the USTR has finally negotiated (in 1994) an international agreement that requires total repeal of the entire Vessel Repair law.[14]

V

**UNDER THE CIRCUMSTANCES PRESENT HERE, THE TECHNICAL AMENDMENT WILL NOT RESULT IN A REVENUE LOSS. HOWEVER, BECAUSE OF THE IMPORTANCE OF EARLY ENACTMENT OF THIS STATUTORY CLARIFICATION, A REASONABLE REVENUE OFFSET IS PROPOSED TO ASSURE CONGRESSIONAL ACTION THIS YEAR.**

As stated above, a two-year limitation was placed on the two tariff exemptions here involved in 1990 solely to accommodate the USTR. In 1992, the House approved an extension of said exemptions through 1994, but legislative gridlock prevented final Congressional approval. The U.S. Customs Service administratively suspended enforcement of the Vessel Repair statute against these two exemptions during 1993-1994, and now Congress had made the two exemptions permanent. Finally, Congress is now considering an international agreement negotiated by the USTR which provides for total repeal of the Vessel Repair law.

Under all these circumstances, it is respectfully submitted that enactment of the technical, clarifying amendment now proposed cannot reasonably be construed to result in any recognizable revenue loss for the government.

In any event, as the Customs Service will hopefully confirm, any revenues now retroactively collected on these exemptions for the period 1993-1994 will be relatively *de minimis* -- and in order to collect those relatively small revenues, both the government and the U. S. maritime industry will be required to expend significant amounts in administrative and judicial proceedings.

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[14] **In addition, the amendment is necessary to clarify the spare parts exemption to make it plain that said exemption covers not only parts, but also materials and equipment.**

Accordingly, the Committee is urged to treat the attached proposed amendment as "revenue neutral," i.e., it will not result in any significant revenue loss to the government.

If, for any reasons, the Committee cannot follow that course in this instance, the following germane "revenue offset," which was apparently acceptable to the Committee staff as recently as last year; which does not require any new tax or tax increase -- and for which revenue estimates were obtained from the Joint Committee on Taxation in July 1994 -- is submitted for the Committee's consideration:

> Nonresident aliens and foreign corporations claiming benefit from treaties or reciprocal arrangements that might provide U.S. tax exemption for U.S.-source shipping income, would have the exemption denied and deductions and credits disallowed, if the necessary returns claiming the exemption are not filed. To enable the IRS to identify foreign-flag ships engaged in shipping to and from the U.S., the proposal would also require the U.S. Customs Service to supply the IRS with manifest data in a usable form.

As stated above, in July, 1994, the Joint Committee on Taxation released the following revenue estimates for this proposal:

<u>In Millions of Dollars</u>

| 1995 | 1996 | 1997 | 1998 | 1999 | 1995-99 |
|---|---|---|---|---|---|
| 1 | 2 | 4 | 5 | 6 | 18 |

## Conclusion

On behalf of our clients, we urge the Committee to adopt and favorably report the attached technical, clarifying amendment as part of any legislation which might result form the current proceedings or any other relevant proceedings.

**PROPOSED TECHNICAL AMENDMENT**

**CUSTOMS AND TRADE ACT OF 1990, AS AMENDED BY URUGUAY ROUND AGREEMENTS ACT OF 1994.**

A. Section 484E(b) of the Customs and Trade Act of 1990, Pub.L. 101-382, Title IV, 19 U.S.C. § 1466 note, as amended by Section 112(a) of the Uruguay Round Agreements Act of 1994, Pub.L. 103-465, Title I, Subtitle B, is further amended --

(1) by striking "December 31, 1992" in paragraph 2(B), and by substituting therefor "December 31, 1994."

B. Section 484E(a) of the Customs and Trade Act of 1990, Pub.L. 101-382, Title IV, 19 U.S.C. § 1466(h), as amended by Section 112(b)(3) of the Uruguay Round Agreements Act of 1994, Pub.L. 103-465, Title I, Subtitle B, 19 U.S.C. § 1466 (h)(3), is further amended so paragraph (3) reads as follows:

"(3) the cost of spare parts, equipment or materials installed on a vessel before the first entry of such parts, equipment or materials into the United States, but only if duty is paid, or a bond or other acceptable security for duty is posted, under appropriate commodity classifications of the Harmonized Tariff Schedule of the United States upon first entry into the United States of each such spare part, equipment or materials purchased in, or imported from, a foreign country."

May 25, 1995

**STATEMENT OF VALENT U.S.A. CORPORATION IN SUPPORT OF RETROACTIVITY FOR A TECHNICAL CORRECTION OF THE TARIFF TREATMENT OF BENTHIOCARB**

These comments are submitted to the Subcommittee on Trade of the Committee on Ways and Means on behalf of Valent U.S.A. Corporation (Valent) of Walnut Creek, California in response to the Chairman's request of April 25, 1995 (Advisory No. TR-8). Valent seeks retroactivity for a technical correction of the tariff treatment of benthiocarb adopted with the "Uruguay Round Agreements Act" (URAA) (P.L. 103-465). Historically, Congress has provided retroactive corrections for bona-fide errors of this nature, and the Congressional Budget Office (CBO) has scored such corrections revenue-neutral.

Valent suffered losses in excess of $ .5 million over a five-year period due to an error in the conversion from the Tariff Schedules of the U.S. (TSUSA) to the Harmonized Tariff Schedule of the U.S. (HTSUS) under the "Omnibus Trade and Competitiveness Act of 1988" (P.L. 100-418). Congress and the Administration acknowledged this error by providing a prospective correction through the URAA, but no provision was made to enable Valent to obtain reliquidation of affected entries and recover excess duty payments.

Valent uses benthiocarb in the formulation of Bolero®, a herbicide of crucial importance to American rice farmers for broad-spectrum grass and weed control. Because the nearly 100% duty increase resulting from this error could not be anticipated, Valent was forced to absorb this added expense rather than increase the price of Bolero®, with the anticipation that Congress would correct the error retroactively. Without retroactivity, Valent will be forced to recover the excess duty expense through higher prices Bolero® consumers.

## Valent U.S.A. Corporation

Valent, incorporated in California in 1988, is an innovator in the development, production, and distribution of a new generation of more effective crop protection products. Employing over 220 people in California and across the U.S., Valent produces herbicides and insecticides that help American farmers grow abundant and healthy crops for worldwide distribution.

Valent produces its crop protection line from a broad spectrum of imported and domestically produced materials. The products are currently formulated and packaged under contract by Helena Chemical Company of Cordele, Georgia and Agricultural Warehouse, Inc. of Ennis, Texas for commercial distribution by Valent. Valent is proud to be a leader in developing a new generation of more environmentally compatible pesticides for agricultural use.

## Benthiocarb Tariff History

Benthiocarb has been imported into the U.S. since 1984, and Valent has been the sole U.S. importer since 1988. Under the TSUSA, benthiocarb was classified under its specific chemical name under subheading 408.17.00 at a duty rate of 6.8% ad val. Although the conversion from the TSUSA to the HTSUS was intended to be revenue-neutral to importers, the breakout listing the specific chemical name for benthiocarb was eliminated in the conversion, and benthiocarb was inadvertently placed in the residual HTSUS subheading 2930.90.10 with a duty rate of 12.5% ad val., a nearly 100% duty increase.

Legislation (H.R. 4835, 102nd Cong., H.R. 2690, 103rd Cong.) was introduced to correct this error with retroactive application, and was found to be non-controversial in the regular Administration review process, acknowledging the conversion error.

A correction was incorporated into Schedule XX-U.S., annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (Schedule XX), as adopted with the URAA. Accordingly, Presidential Proclamation 6763 of December 23, 1994 created a new HTSUS subheading 9707.29.04 for benthiocarb with a duty rate of 6.8% ad val. effective January 1, 1995, subject to 10-stage rate reduction to 6.3% ad val. There was no mechanism in Schedule XX to address retroactivity.

## Retroactive Technical Corrections

Since enactment of the HTSUS, Congress has provided retroactive corrections of bona-fide conversion errors in several Acts[1]. Other retroactive corrections have been attempted in numerous bills reported from committee but not enacted[2]. CBO has considered these provisions revenue-neutral because they correct errors in previous acts originally scored as if no error had occurred.[3]

Two retroactive corrections of tariff conversion errors were included in Sec. 113 of the URAA, the Statement of Administrative Action to which said,

> These provisions are necessary to correct long-standing errors in classification of certain products in the HTS that are corrected prospectively in Schedule XX, or to correct omissions in the preparation of that Schedule.[4]

A retroactive correction for benthiocarb would meet this criteria (i.e.; long-standing error, corrected prospectively in Schedule XX), and does not differ in any qualitative manner from the two corrections included in Sec. 113 of the URAA.

## Conclusion

Valent, a medium-sized business providing innovative products of critical importance to American farmers, suffered an unanticipated loss in excess of $ .5 million due to the acknowledged conversion error in the tariff treatment of benthiocarb. Bolero®, the commercial herbicide formulated from benthiocarb, accounts for approximately $10 million, or about 10%, of Valent's annual sales. In anticipation of a retroactive correction, Valent absorbed this loss. Without such correction,

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[1] See "Customs and Trade Act of 1990" (P.L. 101-385), Title III, Subtitle B, "Omnibus Budget Reconciliation Act of 1990" (P.L. 101-508), Title X, Subtitle A, Part II, "Uruguay Round Agreements Act" (P.L. 103-465), Sec. 113.

[2] See H.R. 1555, 102nd Cong. ("Technical Corrections Act of 1991"), H.R. 11, 102nd Cong. ("Revenue Act of 1992"), Title VI, H.R. 3419, 103rd Cong. ("Tax Simplification and Technical Corrections Act of 1993").

[3] See, for instance, Blum, James L., CBO "Statement...," November 10, 1993, as reprinted in H.R. Rep. No. 353, 103rd Cong, 1st Sess. (1993) pp.243-44).

[4] House Doc. 316, 103rd Cong. ("Message from the President Transmitting the URAA"), September 27, 1994, p.701.

Valent will be forced to recover this loss through higher consumer prices.

Congress and the Administration acknowledged this conversion error by providing a prospective correction through the URAA, and there is ample precedent for Congress to provide retroactivity with revenue-neutral scoring. Attachment A to this statement is a draft of legislation to provide such retroactivity.

To conclusively redress this error and enable Valent to continue providing Bolero® to American rice farmers at an economical price, Valent respectfully requests enactment of a provision for the retroactive correction of the tariff treatment of benthiocarb.

Respectfully submitted,

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on behalf of Valent U.S.A. Corporation

SL:rtd

# Vicksburg - Jackson Foreign Trade Zone, Inc.

May 26, 1995

Mr. Philip D. Moseley
Chief of Staff
Committee on Ways and Means
U. S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

RE: SUPPORTIVE COMMENTS ON THE TECHNICAL CORRECTION LEGISLATION PRESENTED BY CONGRESSMAN PHILIP CRANE

Dear Mr. Moseley:

The above legislation clarifying the merchandise processing fee as it applies only to the foreign value of merchandise entered from a foreign trade zone is needed and supported by our zone.

The Vicksburg/Jackson Foreign Trade Zone No. 158 has two subzones including CMC, Inc., in Corinth and Peavey Electronics Corporation in Meridian which are utilizing the zone process in this area.

Our zone strongly supports the above corrective legislation and believes the technical correction is necessary to resolve the intent of the law. Without passage of this technical correction legislation, we are forced into a position of paying merchandise processing fees on products with value added domestically. We do not believe this is fair and strongly support the passage of this legislation in order to allow American companies to fairly compete in the international marketplace.

Thank you for your time and consideration and for allowing us to express our opinion on the passage of this important legislation.

Sincerely,

Francis M. Biedenharn

Francis M. Biedenharn
President
Vicksburg/Jackson FTZ No.158

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WINNEBAGO
INDUSTRIES

May 19, 1995

Phillip D. Moseley
Chief of Staff
Committee on Ways and Means
U.S. House of Representatives
1102 Longworth House Office Building
Washington, D.C. 20515

Dear Mr. Moseley:

Member of Congress Phillip M. Crane, requested written comments from all interested parties concerning Technical Corrections to recent trade legislation. Winnebago Industries strongly supports the proposed Technical Corrections legislation in general, and in particular, the clarification for application of Customs ad valorem merchandise processing fee. We believe Section 111(b)(2)(D)(v) and Section 1303(b)(8)(D) of the Custom and Trade Act, applies only to the foreign value of merchandise entered from a foreign-trade zone.

Winnebago strongly supports this clarification for several reasons. For example, the merchandise processing fee was not intended, to be charged on domestic materials, labor, overhead, and profit associated with merchandise produced in a foreign-trade zone. However, because this was never specifically stated, numerous problems and considerable confusion have resulted. For this reason, the Technical Correction is necessary to further the intent of the laws and regulations concerning foreign-trade zones and the payment of merchandise processing fees.

Sincerely,

Wesley Lasitne

Wesley Lasitne

Foreign Trade Zone Supervisor

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